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Is the EU an *LGBTIQ freedom zone*?

Assessing Europeanisation of LGBTI rights through
the European response to Polish *LGBTI-free zones*

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Introduction

They want to scare us¹
I don't feel that I can fully be myself here²
I am a transgender person, for me it's like hell living here³
They open the gate for all kind of hate, so I am more cautious when I walk the city⁴

These are testimonies of LGBTI⁵ people living in Poland and more precisely in areas where local authorities have adopted anti-LGBTI resolutions. They reveal the fear, rejection and anxiety experienced by sexual and gender minorities in these places, which fuel what psychology has termed “minority stress”⁶. Such context has serious consequences on LGBTI people’s mental health in a country where LGBTI teenagers experience suicidal thoughts five times more than other teenagers⁷.

According to Bucholc, *LGBTI-free zones* are “a construction of moralized social spaces designed to cast out the minority”⁸. They are municipalities, counties, and regions (*gminas*, *powiats* and *voivodeships*) in Poland whose governments have passed a resolution either adopting the “Charter of the Rights of the Family”, or an anti-LGBTI ideology declaration. The Charter⁹ was produced by Ordo Iuris, an ultra-conservative Catholic legal lobby very active in Poland and supported by the ruling government¹⁰. The document is presented as a position

¹ Ash, L. (2020, September 20). Inside Poland’s “LGBT-Free Zones”. *BBC News*

² *BBC News*. (2021, November 24). LGBT in Poland: I Still Can’t Be Myself [Video]

³ *Ibid.*

⁴ *PBS NewsHour*. (2021, August 29). “Anti-LGBT Ideology Zones Are Being Enacted in Polish Towns [Video]

⁵ For clarity I will use the acronym LGBTI throughout the paper, with some exceptions (where cited stakeholders or texts use other acronyms). While this acronym stands for Lesbian, Gay, Bisexual, Transgender and Intersex, I will use it to cover the full range of sexual and gender minorities that differ from the heteronormative cisgender norm.

⁶ Meyer, I. H. (1995). Minority Stress and Mental Health in Gay Men. *Journal of Health and Social Behavior*, 36(1), 38–56

⁷ Kampania Przeciw Homofobii. (2017). *Situation of LGBTI Persons in Poland*, p.62

⁸ Bucholc, M. (2022). The Anti-LGBTIQ Campaign in Poland: The Established, the Outsiders, and the Legal Performance of Exclusion. *Law & Policy*, 44(1), 4–22

⁹ Ordo Iuris Institute. (2019) *Local Government Charter of the Rights of the Family*. <https://v.fastcdn.co/u/ff8eca37/50262470-0-SKPR-commune-ENG.pdf>

¹⁰ Cipek, T., & Lacković, S. (2020). Civil Society and the Rise of the Radical Right in Poland. *Politička Misao*, 56(3-4), 153–76

paper to protect the traditional heteronormative Polish family from some alleged perversions of the school institution and the sexualisation of children. Anti-LGBTI ideology resolutions, on the other hand, are more explicit as they directly name their enemy. They are almost replicas of each other and also intend to defend Catholic values and the identity of the Polish nation against a foreign ideology¹¹. In terms of content, the two types of resolutions are different, but they are a mirror response to the adoption of a pro-LGBTI rights declaration by Rafał Trzaskowski, the liberal Mayor of Warsaw in February 2019¹².

One month later, the county of Świdnik was the first to adopt such resolutions and soon other local authorities followed¹³, reaching a number of around 100 *LGBTI-free zones* by early 2021, mainly governed by the ruling party *Prawo i Sprawiedliwość* (PiS) (*Law and Justice Party*) and located in Southeastern Poland. The term *LGBTI-free zones* comes directly from the wording on stickers distributed by the conservative weekly *Gazeta Polska*. The name was then taken up by Polish LGBTI activists themselves to draw attention to local councils passing resolutions discriminating against the LGBTI community under the guise of protecting children from sexualisation, preserving Polish families and the Catholic identity of the nation.

These political stances come against the backdrop of a growing anti-gender discourse in Poland¹⁴ and tense relations between Poland and the European Union (EU). On the one hand, the emergence of anti-LGBTI statements is not new in a Poland where the PiS, in power since 2015, has made it a campaigning point to fight against "gender ideology" and to declare a "war on gender"¹⁵. The rise of anti-gender discourse is not specific to Poland but is to be analysed within the context of global culture wars, which have been particularly visible in Central and Eastern Europe¹⁶ where current ruling conservative political parties have made use of gender

¹¹ Bucholc, M. (2022). The Anti-LGBTIQ Campaign in Poland. The Established, the Outsiders, and the Legal Performance of Exclusion. *Law & Policy*, 44(1), 4–22

¹² Ramsden, S. (2019, March 4). Rafał Trzaskowski: Warsaw Mayor Faces Backlash for Protecting LGBT Rights. *PinkNews*

¹³ Graff, A., & Korolczuk, E. (2021). "Worse than Communism and Nazism Put Together": Poland's Anti-Gender Campaigns in a Comparative Perspective. In *Anti-Gender Politics in the Populist Moment* (pp. 67-91)

¹⁴ *Ibid.*

¹⁵ Korolczuk, E. (2019). The Fight against "Gender" and "LGBT Ideology": New Developments in Poland. *European Journal of Politics and Gender*, 3(1), 165-7

¹⁶ Hesová, Z. (2021). Three Types of Culture Wars and the Populist Strategies in Central Europe. *Politologický Časopis - Czech Journal of Political Science*, 28(2), 130-150; Barša, P., Hesová, Z., & Slačálek, O. (2021). *Central European Culture Wars: Beyond post-communism and populism*. Faculty of Arts, Charles University

as a “symbolic glue” easily incorporated into populist discourses¹⁷. On the other hand, the first *LGBTI-free zones* emerged in spring 2019, in the run-up to the European elections, when Poland was being challenged an infringement procedure launched by the European Commission (EC) for violations of the rule of law and the guarantee of the independence of Polish judges¹⁸.

In March 2021, the European Parliament (EP) adopted a resolution declaring the EU as an *LGBTIQ-freedom zone*¹⁹, as a direct response to Polish *LGBTI-free zones*. This was the second resolution that the EP adopted in reaction to these zones, the first one, with less media coverage, dating back to December 2019²⁰. But is the EU really an *LGBTIQ-freedom zone*? The year 2022 has been the more violent of the last decade for LGBTI people in Europe, according to the last annual report of ILGA-Europe²¹, the main NGO representing LGBTI interests in the region. Such statistic suggests a recent decline in LGBTI rights in Europe, while at the same time European institutions have been showing increasing support for sexual and gender minorities.

Indeed, in 2021, the Commission launched its very first LGBTI strategy²². More recently, it adopted a proposal for a Regulation on the recognition of parenthood between member states²³ and is currently – along with 15 member states and the EP – bringing Hungary before the Court of Justice of the European Union (CJEU) for its recently adopted Russian-style anti-LGBTI law. The CJEU, through its jurisprudence, has followed the trend of the EC with decisive judgements such as the *Coman* case²⁴. But the defence of LGBTI rights is not only promoted

¹⁷ Getz, L., Põim, M. (2015). *Gender as Symbolic Glue: The Position and Role of Conservative and Far Right Parties in the Anti-Gender Mobilizations in Europe*, Foundation for European Progressive Studies

¹⁸ European Commission. (2021, December 21). *Rule of Law: Commission launches infringement procedure against Poland for violations of EU law by its Constitutional Tribunal* [Press release]

¹⁹ European Parliament Resolution 2021/2557 of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone [2021] OJ C474/140

²⁰ European Parliament Resolution 2019/2933 of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones [2019] OJ C255/7

²¹ ILGA-Europe. (2023). *Annual Review of the Human Rights Situation of LGBTI People in Europe and Central Asia: 2022*

²² European Commission. (2020). *Union of Equality: LGBTIQ Equality Strategy 2020-2025*

²³ Proposal for a Council Regulation 2022/0402 of 7 December 2022 on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matter of parenthood and on the creation of a European Certificate of Parenthood [2022]

²⁴ The *Coman and others v. General Inspectorate for Immigration and Ministry of the Interior* is a major case law for LGBTI rights in the EU as it stated that same-sex marriage in one EU country should be recognized in other EU countries, so that free movement and indirect right of residence of any EU resident’s spouse are guaranteed. See Vaige, L. (2020). “Listening to the Winds” of Europeanisation? The Example of Cross-Border Recognition of Same-Sex Family Relationships in Poland. *Oslo Law Review*, 7(1), pp.48-9.

by the Union, as the Council of Europe (CoE) has also been active with the European Court of Human Rights (ECtHR) issuing several judgments against violations of sexual and gender minorities' rights²⁵.

In response to *LGBTI-free zones* and under the pressure of Polish activists, the EP has adopted pro-LGBTI resolutions, the EC has suspended European structural funds allocated to Polish municipalities and regions and launched an infringement procedure against Poland because of its anti-LGBTI resolutions in July 2021. While around 60 Polish local authorities have backed down, also after the Polish Supreme Administrative Court itself declared these resolutions illegal²⁶, there remain around 50 LGBTI-free zones, including the voivodeship of Łódź, to date. In remaining *LGBTI-free zones*, sexual and gender minorities feel weakened in securing their integrity and rights as citizens. Yet, the EC chose to close its infringement procedure on 23 January 2023, seeming to have disengaged itself.

Why do *LGBTI-free zones* generate so much expectation of reaction from the European institutions? I argue that it is because the very existence of such zones challenges the Europeanisation of LGBTI rights. Based on Radaelli's canonical definition of Europeanisation namely the “process involving a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures, and public choices”²⁷. LGBTI rights fall within the scope of 'shared beliefs and norms' insofar as the EU Treaties, in particular Articles 2 TEU, 10 and 19 TFEU and Article 21 of the Charter of Fundamental Rights, uphold the principle of non-discrimination. What can the European response to *LGBTI-free zones* tell us about the Europeanisation of LGBTI rights?

Two opposite uses of the EU can be observed but producing the same effects. On the one hand, *LGBTI-free zones* emerged in the context of European elections when PiS local and regional leaders crossed their anti-gender and anti-EU agendas. They portrayed the EU as a threat to Polish traditional values and the source of a so-called “gender ideology”. On the opposite side,

²⁵ Ammaturo, F. R. (2015). The “Pink Agenda”: Questioning and Challenging European Homonationalist Sexual Citizenship. *Sociology*, 49(6), 1151–66

²⁶ Wądołowska, A. (2020, July 15). Polish Courts Annul “LGBT Ideology-Free Zones”, Finding They Violate Constitution. *Notes From Poland*

Polish LGBTI activists also actively referred to the EU in order to catch the attention of European institutions after the emergence of *LGBTI-free zones* in Poland and asking them to react, to condemn and sanction the existence of such overtly discriminatory zones. Thus, both actors mobilised references to Europe in a national context. Their use of Europe is different but leads to the same result: the EU is associated with the defence of LGBTI rights, either as the source of a problem or as its solution. Thus, a first hypothesis would be to assume that ***LGBTI-free zones highlight an effective Europeanisation of the idea of LGBTI rights within member states.***

In addition, a paradox emerges around the cultural normative power of the EU. While some scholars have spoken of a kind of "Europeanness of LGBT rights"^[2] and national LGBTI activists tend to take over the European field, the situation of sexual and gender minorities within the Union itself, notably in Poland and Hungary, challenges the Europeanisation of values. The case of the *LGBTI-free zones* in Poland challenges the effectiveness of Europeanisation in terms of values as the regression of LGBTI rights in the country suggests the possibility of a counter-Europeanisation. The attacks on sexual and gender minorities' rights are not confined to *LGBTI-free zones*, nor to Poland, but this case study is just one manifestation of the rise of a challenge to progressive values in the context of the culture wars. I would thus hypothesise that ***LGBTI-free zones are an illustration of a broader culture-wars based geopolitical division of Europe, preventing a homogenous Europeanisation of LGBTI rights.***

Eventually, LGBTI-free zones emerged in the context of democratic backsliding in Poland. Indeed since 2015, the PiS government has progressively undertaken reforms of its justice systems, compromising its independence from the executive power. In their official discourse, European institutions have tended to address violations of the rule of law and LGBT rights together. Thus, a last hypothesis would be that ***LGBTI-free zones have been addressed along with the rule of law crisis in Poland, and Europeanisation of LGBTI rights is enforced via common instruments.***

This paper then intends to analyse the European response to *LGBTI-free zones*, "response" being understood as possible political, legal, and economic pressure or sanctions, and "European" here covering European institutions, namely the EU ones, the Council of Europe (CoE) and the European Court of Human Rights (ECtHR). The ambition of this paper is to

answer the following research question: *How does the European response to Polish LGBTI-free zones highlight both the extent of the Europeanisation of LGBTI rights and its political and legal limits?*

This paper will discuss the different dimensions of Europeanisation, its process as well as its actors and their instruments. The case study of *LGBTI-free zones* in Poland will make it possible to highlight the extent and the limits of the Europeanisation of LGBTI rights.

State of the Art

As far as the academic literature on the subject is concerned, *LGBTI-free zones* as a case study have not yet been specifically researched through the lens of Europeanisation. However, a few scholars have recently examined the emergence of *LGBTI-free zones* through a different lens. Indeed, in 2022, Bucholc has published an article on “The anti-LGBTIQ campaign in Poland”²⁷ highlighting the mechanisms of exclusion of sexual and gender minorities at stake in anti-LGBTI resolutions. Moreover, the same year, Ploszka investigated *LGBTI-free zones* examining the role of Polish local governments and framing the issue within the culture wars context²⁸. Building upon their research, I intend to fill a gap in literature by applying the lens of Europeanisation of LGBTI rights on this particularly interesting case study.

On Europeanisation of LGBTI rights, I intend to base my arguments upon the definition of Radaelli but also on his more recent works on the different dimensions of Europeanisation, including *bottom-up* Europeanisation²⁹. Such Europeanisation relies on the appropriation by national actors of European references. It addresses the question of the construction of the EU as an LGBTI ally in the sociology of social movements. Indeed, scholars have shown that the

²⁷ Bucholc, M. (2022). The Anti-LGBTIQ Campaign in Poland: The Established, the Outsiders, and the Legal Performance of Exclusion. *Law & Policy*, 44(1), 4–22

²⁸ Ploszka, A. (2023). From Human Rights to Human Wrongs. How Local Government Can Negatively Influence the Situation of an Individual. The Case of Polish LGBT Ideology-Free Zones. *The International Journal of Human Rights*, 27(2), 359-379

²⁹ Radaelli, C. (2003). The Europeanization of Public Policy. In K. Featherstone & C. Radaelli (eds), *The Politics of Europeanization* (pp. 27–56). Oxford University Press ; Radaelli, C. (2019). Européanisation. In L. Boussaguet (ed), *Dictionnaire des politiques publiques: 5^e édition entièrement revue et corrigée* (pp. 239-247). Paris: Presses de Sciences Po.

EU has been constructed as a privileged political opportunity structure for LGBTI activists³⁰ and opponents. Mobilising the academic work that has highlighted the different uses or “usages” of Europe³¹, I will try to show that PiS leaders and LGBTI activists have actively used the EU as a “political resource”³² in the sense understood by Sudbery using her theoretical framework. On the one hand, the literature on the anti-gender discourse, notably Graff and Korolczuk research on Poland³³, will help me in understanding the context in which *LGBTI-free zones* have emerged as well as anti-gender strategies³⁴. Indeed, the scholars who have studied the anti-gender discourses of the PiS point to recurring references to the idea of civilisational decline coming from Western decadence that is contrary to the Christian values of Poland, the last bastion of European civilisation. On the other hand, as literature on LGBTI activism happens to be very rich, I will mobilise some recent works from Ayoub and Paternotte³⁵ as well as O’Dwyer³⁶ who argue that the EU has been a privileged political opportunity structure for LGBTI activists, to explore how they call on European institutions to take action against *LGBTI-free zones*.

The works of Ammaturo, on the Council of Europe’s “Pink Agenda”³⁷, and of Mos, on Europe’s normative power³⁸, will be key to grasp the challenges related to the Europeanisation of LGBTI rights, namely because these rights fall under the scope of “values” and values, unlike policies, are hardly enforced at the European level. The existence of explicitly discriminatory zones

³⁰ Ayoub, P., & Paternotte, D. (2014). *LGBT Activism and the Making of Europe : A Rainbow Europe?* Palgrave MacMillan

³¹ Jacquot, S., & Woll, C. (2004). *Les Usages de l’Europe. Acteurs et Transformations Européennes*. L’Harmattan

³² Sudbery, I. (2010) The EU as Political Resource: NGOs as Change Agents? *Acta Politica*, 45(1), 136–57

³³ Graff, A., & Korolczuk, E. (2018). Gender as “Ebola from Brussels”: The Anticolonial Frame and the Rise of Illiberal Populism. *Signs Journal of Women in Culture and Society*, 43(4), 797-821 ; Graff, A., & Korolczuk, E. (2021). “Worse than Communism and Nazism Put Together”: Poland’s Anti-Gender Campaigns in a Comparative Perspective. In *Anti-Gender Politics in the Populist Moment* (pp. 67-91). Routledge

³⁴ Garbagnoli, S. (2016). Against the Heresy of Immanence: Vatican’s “Gender” as a New Rhetorical Device Against the Denaturalization of the Sexual Order. *Religion and Gender*, 6(2), 187-204 ; Yermakova, O. (2021). PiS vs LGBT: The “Othering” of the LGBT Movement as an Element of Populist Radical Right Party Discourse in Poland. *Sprawy Narodowościowe*, 53 ; Kuhar R., & Paternotte, D. (2017). *Anti-Gender Campaigns in Europe: Mobilizing against Equality*. Rowman & Littlefield

³⁵ Ayoub, P., & Paternotte, D. (2014). *LGBT Activism and the Making of Europe*

³⁶ O’Dwyer, C. (2010). From Conditionality to Persuasion? Europeanization and the Rights of Sexual Minorities in Post-Accession Poland. *Journal of European Integration*, 32(3), 229–47 ; O’Dwyer, C. (2012). Does the EU Help or Hinder Gay-Rights Movements in Post-Communist Europe? The Case of Poland. *East European Politics*, 28(4), 332–52

³⁷ Ammaturo, F. R. (2015). The “Pink Agenda”: Questioning and Challenging European Homonationalist Sexual Citizenship. *Sociology*, 49(6), 1151–66

³⁸ Mos, M. (2013). Conflicted Normative Power Europe: The European Union and Sexual Minority Rights. *Journal of Contemporary European Research*, 9(1), 78-93

within the EU has proven to be a challenge to the very identity of the EU. Indeed, Akalyinski, Welzel and Hien point out that since the Maastricht Treaty (1992) "culture has become the focus of the third wave of European integration, so as to strengthen European identity and increase the legitimacy of EU institutions"³⁹. Cultural integration has therefore been a stated objective of the EU. To defend its values, the EU has progressively developed tools, starting with EU law and Treaties, which have primacy over national legal orders, but also by developing control and sanction mechanisms. Literature on these mechanisms has been mainly focused on the rule of law, but one could argue that the enforcement of EU values goes hand in hand with the enforcement of rule of law in the EU. Many scholars, such as Bakke & Sitter⁴⁰ have published papers on the (Polish) rule of law crisis and democratic backsliding that will be useful in bringing context to my case study. Moreover, depending on the definition of democracy, LGBTI rights could also be included as part of democratic rights. This broader conception of democracy is defended by Oleart and Theuns⁴¹, according to whom democracy would cover fundamental rights, including non-discrimination principles. It will be interesting to compare the Commission's attitude towards democratic backsliding, which Oleart and Theuns describe as 'depoliticised', with the one adopted towards attacks to LGBTI rights in Poland, in order to identify common mechanisms for responding to breaches of the EU's fundamental values.

If Ploszka has already explored the culture wars dimension of *LGBTI-free zones*, it remains of interest to learn from the different academic works on the topic. Indeed, *LGBTI-free zones* are obviously linked to the rise of populism which engages in culture wars and the battle for the cultural hegemony of a traditional nationalist narrative, salient in the Central and Eastern European context. As explained by Barša, Hesová, and Slačálek⁴², culture wars, especially the front of "politics of morality" have been particularly invested in by Polish PiS leaders. Thus, the theoretical framework of culture wars allows for a better understanding of *LGBTI-free*

³⁹ Akaliyski, P., Welzel, C., & Hien, J. (2022). A Community of Shared Values? Dimensions and Dynamics of Cultural Integration in the European Union. *Journal of European Integration*, 44(4), 569–90

⁴⁰ Bakke, E., & Sitter, N. (2022). The EU's Enfants Terribles: Democratic Backsliding in Central Europe since 2010. *Perspectives on Politics*, 20(1), 22–37

⁴¹ Oleart, A., & Theuns, T. (2022). "Democracy without Politics" in the European Commission's Response to Democratic Backsliding: From Technocratic Legalism to Democratic Pluralism. *JCMS: Journal of Common Market Studies*, 1–18

⁴² Barša, P., Hesová, Z., & Slačálek, O. (2021). *Central European Culture Wars: Beyond post-communism and populism*. Faculty of Arts, Charles University ; Hesová, Z. (2021). Three Types of Culture Wars and the Populist Strategies in Central Europe. *Politologický Časopis - Czech Journal of Political Science*, 28(2), 130-150

zones, their emergence but also their consequences on the European political arena. Indeed, LGBTI rights issues also arise at the European level, as Ahrens, Gaweda and Kantola⁴³ explain. In the EP, debates on gender and sexuality issues divide political groups, in particular the right-wing European People's Party (EPP). In light of this observation, I intend to further analyse the debate on the adoption of the counter-resolution to the *LGBTI-free zones resolutions*. From such analysis, I intend to continue the questioning of a “sexual division” of Europe as suggested by Chetaille⁴⁴, to show how culture wars politics are reshaping European political cleavages, not sparing the EU, nor its Parliament.

Research Methodology

The starting point of my research was the EP resolution declaring the EU as *an LGBTQ freedom zone*. I have therefore delved into the study of this resolution to produce a qualitative and quantitative analysis. Firstly, I sought to map the EP actors active in promoting a pro-LGBT EU agenda and secondly, I noted the absence of a unanimous position within the European right. I therefore paid particular attention to the results of the vote on this resolution, using the *VoteWatch* open access database, but also to the interventions during the plenary of the adoption of the resolution.

From a purely qualitative point of view, I have conducted seven semi-structured interviews with persons who have been involved in the response to *LGBTI-free zones*, between November 2022 and April 2023. The interviewees are from different institutions and organisations: three of them depend on the EP and more precisely the LGBTI intergroup (a Member of European Parliament, its Accredited Parliamentary Assistant, and the Secretary-General of the intergroup), two are LGBTI activists (one from Poland, the other from Belgium), one is working at the European Commission within DG REGIO and the last one seats at the Congress of Local and Regional Authorities of the CoE. Having different positions and nationalities, they were asked about their opinion and role in fighting *LGBTI-free zones* and the broader situation of

⁴³ Ahrens, P., Gaweda, B., & Kantola, J. (2022). Reframing the Language of Human Rights? Political Group Contestations on Women's and LGBTQI Rights in European Parliament Debates. *Journal of European Integration*, 44(6), 803–19

⁴⁴ Chetaille, A. (2013). Une « autre Europe » homophobe ? L'Union européenne, le nationalisme polonais et la sexualisation de la « division Est/Ouest ». *Raisons politiques*, 49(1), 119–40

LGBTI discriminations in Poland and the EU. These interviews have been a way to go beyond “grey literature”, i.e., institutional and NGOs’ reports.

However, this literature remained relevant to my research, in order to confront the stated ambitions of the institutions and the claims of LGBTI organisations to the reality of the European response to LGBTI situation in Poland. Reading the reports produced by NGOs informed me of the issues related to LGBTI rights in Poland and to *LGBTI-free zones*. In addition, they also highlighted what activists were asking to the European institutions, what they expected from them and how they reacted to their action.

On the other hand, institutional documents enriched my research on several levels. Firstly, the analysis of *LGBTI-free zones*’ resolutions, namely the Charter of the Rights of the Family⁴⁵ published by Ordo Iuris and one example of an anti-LGBTI ideology resolution from the Świdnik Council⁴⁶, were essential to grasp the essence of *LGBTI-free zones*. Then, at the European level, I studied the diplomatic exchanges between the Council of Europe and Poland: a report produced by the Congress of Local and Regional Authorities of the CoE⁴⁷ but also the memorandum of the Commissioner for Human Rights mentioning *LGBTI-free zones*⁴⁸, as well as the response of the Polish government⁴⁹.

The paper is divided into three sections. Each section will focus on a dimension of Europeanisation or its limits through the case study of *LGBTI-free zones*. The first part will question the logic of a *bottom-up* Europeanisation behind the shared construction of the EU as an LGBTI ally. The second will underline the political and geopolitical limits of the Europeanisation of LGBTI rights, namely the weakness of their enforcement and the division of Europe around the cultural issue of sexuality. Finally, the last section will identify the

⁴⁵ Ordo Iuris Institute. (2019) *Local Government Charter of the Rights of the Family*. <https://v.fastcdn.co/u/ff8eca37/50262470-0-SKPR-commune-ENG.pdf>

⁴⁶ Powiat świdnicki [Świdnica district]. (2019, March 26) *Stanowisko Nr 1/2019 w sprawie powstrzymania ideologii „LGBT” przez wspólnotę samorządową [Position Statement No. 1/2019 on the containment of 'LGBT' ideology by the local government community]*. <https://spswidnik.bip.lubelskie.pl/upload/pliki/0stanowisko.pdf>

⁴⁷ Boff, A. (2021). *The Role of Local and Regional Authorities with Regard to the Situation of LGBTI People in Poland*. Congress of Local and Regional Authorities of the Council of Europe

⁴⁸ Commissioner for Human Rights. (2020). *Memorandum on the Stigmatisation of LGBTI People in Poland*. Council of Europe

⁴⁹ Republic of Poland. (2020). *Comments of the Government of the Republic of Poland to the Commissioner for Human Rights of the Council of Europe’s Memorandum on the Stigmatisation of LGBTI People in Poland*.

relevant instruments to ensure the Europeanisation of LGBTI rights in Poland based on those used to address democratic backsliding.

1. Shifting Polish *LGBTI-free zones* to the European level, an effective *bottom-up* Europeanisation of LGBTI rights

What does the EU have to do with *LGBTI-free zones*? This could be the first question one asks when learning about Polish *LGBTI-free zones*. Yet both supporters and opponents of LGBT rights agree that the EU is involved in this problem, whether they see it as the source of the spread of gender ideology, or as having a responsibility to combat *LGBTI-free zones*.

I will argue that it illustrates a *bottom-up* Europeanisation of LGBTI rights, which is opposed to top-down Europeanisation emanating directly from European institutions and defined by Radaelli as such: “Il s’agit de regarder les acteurs, les problèmes, les ressources, le style et les discours au niveau national. Le point de départ de cette approche est le système d’interactions au niveau national”⁵⁰. This part takes a look at those national-level interactions around *LGBTI-free zones*.

The EU and its “gender ideology” as a threat to Polish Christian values

To begin with, it is interesting to consider how *LGBTI-free zones* are part of a wider movement of opposition to the so-called “gender ideology” by Polish nationalist conservatives. The latter hold the EU responsible for the promotion and dissemination of gender ideology which threatens the identity and values of a Christian Poland. The first *LGBTI-free zones* appeared in the spring of 2019, as early as March, when the campaign for the European elections was underway. However, literature has shown that the PiS has used homophobic speeches and positions during campaigns for electoral purposes with homophobia used as a “political resource”⁵¹. Indeed, they have denounced the so-called “gender ideology”, a significant concept

⁵⁰ Radaelli, C. (2019). Européanisation. In L. Boussaguet (ed), *Dictionnaire des politiques publiques : 5^e édition entièrement revue et corrigée* (pp. 239-247). Paris: Presses de Sciences Po

⁵¹ Chetaille, A. (2013). Une « autre Europe » homophobe ? L’Union européenne, le nationalisme polonais et la sexualisation de la « division Est/Ouest ». *Raisons politiques*, 49(1), 119–40

deployed within the anti-gender movement, headed by the Vatican⁵². This is a particularly effective electoral strategy, adopted in particular by right-wing populist parties such as the PiS, since gender ideology acts as a “symbolic glue”⁵³ enabling to win over a large section of the Polish electorate, notably the Catholic Church, powerful in Poland. This political alliance between nationalists and Catholics has been identified in the literature, notably by Żuk and Żuk⁵⁴.

I argue that in the Polish case, the use of anti-gender discourse also appeals to working-class young Polish men deprived of economic opportunities, a target population active in anti-gender campaign⁵⁵. This is not only due to the fact that the rise of anti-liberal ideas is closely linked with the aftermath of the 2008 economic crisis⁵⁶ but also because the anti-gender discourse promotes a model of “hegemonic masculinity” concealing class domination by enhancing the sexual one⁵⁷.

Moreover, the European elections were an opportunity for the PiS to include anti-gender rhetoric inside its anti-EU discourse, a combination which has been well identified in literature⁵⁸. For instance, the 2019 European elections saw anti-gender and anti-EU rhetoric intertwine. Graff and Korolczuk noted that “Eurosceptics often referred to the European ‘homolobby’ and ‘pro-abortion lobby’ as ultimate threats to the Polish national identity”⁵⁹.

Polish nationalist conservatives have played on the “EU/gender ideology” association to demonise the LGBTI community through various strategies. Firstly, PiS ideologues equate gender ideology with a form of totalitarianism, playing on the symbolic implications that it represents in post-communist Poland. I chose to go through the writings of Ryszard Legutko,

⁵² Garbagnoli, S. (2016). Against the Heresy of Immanence

⁵³ Getz, L., Põim, M. (2015). *Gender as Symbolic Glue*

⁵⁴ Żuk, P. & Żuk, P. (2020). “Murderers of the unborn” and “sexual degenerates” Analysis of the ‘anti-gender’ discourse of the Catholic Church and the nationalist right in Poland, *Critical Discourse Studies*, 17(5), 566-588.

⁵⁵ Graff, A., & Korolczuk, E. (2018). Gender as “Ebola from Brussels”, p.803

⁵⁶ Behr, V., Beyer, J. & Coman, R. (2021). The shaping power of anti-liberal ideas, *European Politics and Society*, 24(1), p.3.

⁵⁷ Connell, R. W. (1987). *Gender and Power: Society, the Person and Sexual Politics*. Stanford University Press

⁵⁸ Chetaille, A. (2013). Une « autre Europe » homophobe ? p.133; Chojnicka, J. (2015). Anti-EU and Anti-LGBT Attitudes in Poland: Considering Quantitative and Qualitative Evidence. *Baltic Journal of European Studies*, 5, 30–55; Mos, M. (2022). Routing or Rerouting Europe? The Civilizational Mission of Anti-Gender Politics in Eastern Europe. *Problems of Post-Communism*, 143-152

⁵⁹ Graff, A., & Korolczuk, E. (2021). “Worse than Communism and Nazism Put Together”, p.87

since he represents very well the anti-liberal ideas of the PiS, being one of their main sources⁶⁰. The Polish MEP, who co-chairs the European Conservatives and Reformists group (ECR) in the EP, draws an analogy between communism and genderism: "a proletarian replaced by a homosexual, a capitalist by a fundamentalist, exploitation by discrimination, a communist revolutionary by a feminist, and a red flag by a vagina"⁶¹.

When not associated with communism, gender ideology is made alien in a process of "othering"⁶² LGBTI people. Thus, the Charter of the Rights of the Family, promoted by Ordo Iuris to local authorities, mentions the danger of "influences of ideologies" on the traditional family⁶³. The term "influence" frames the actors of gender ideology as coming from the outside. Similarly, the anti-LGBTI ideology resolutions adopted by several Polish local authorities denounce the World Health Organisation (WHO) standards, arguing they promote early sexualisation of children. Once again, gender is rejected as an imposition from abroad, in this case from an international organisation.

Finally, the EU and its institutions have been regularly singled out as the source of the LGBTI ideology. In that sense, Legutko writes that "in the European Union the ideology has been emanating with such intensity that each prolonged contact with its institutions requires a thorough detoxification of one's mind and one's language"⁶⁴ or even, with the same sarcasm, that one can no longer say anything outside the "political correctness" formulated by the European Court of Justice (ECJ) or the European Parliament⁶⁵. In this way Polish anti-gender actors such as local authorities adopting anti-LGBTI resolutions have engaged in "culture wars against the LGBTI community"⁶⁶, a war where the EU is portrayed as being on the side of LGBTI.

⁶⁰ Behr, V. (2023). Towards a transnational and social history of anti-liberalism. Insights from the trajectory of Ryszard Legutko. *European Politics and Society*, 24(1), 22-39

⁶¹ Legutko, R. (2016). *The Demon in Democracy. Totalitarian Temptations in Free Societies*. Encounter Books, p.117

⁶² Yermakova, O. (2021). PiS vs LGBT: The "Othering" of the LGBT Movement as an Element of Populist Radical Right Party Discourse in Poland. *Sprawy Narodowościowe*, 53

⁶³ Ordo Iuris Institute. (2019) *Local Government Charter of the Rights of the Family*, p.5

⁶⁴ Legutko, R. (2016). *The Demon in Democracy*. p.115

⁶⁵ *Ibid.* p.123

⁶⁶ Ploszka, A. (2023). From Human Rights to Human Wrongs. How Local Government Can Negatively Influence the Situation of an Individual. The Case of Polish LGBT Ideology-Free Zones. *The International Journal of Human Rights*, 27(2), p.5

While this is a negative use of the EU, it does show a form of effective Europeanisation of LGBTI rights. In contrast, it is now worth observing how a positive use of Europe is made by Polish LGBTI activists engaged against *LGBTI-free zones*.

The EU as a “political resource” for Polish LGBTI activism

Furthermore, the use of the EU and its perception as an LGBTI ally is shared by Polish LGBTI activists. Perhaps this perception is also due to the past experience of Poland's accession, which represented a privileged *political opportunity structure* for certain advances including the legal codification of non-discrimination on the basis of sexual orientation in the Polish Labour Code⁶⁷. Thus, they have formulated expectations around a European reaction to the existence of *LGBTI-free zones*.

I argue here that LGBTI activists in Poland have mobilised the EU as a “political resource” to combat anti-LGBTI resolutions. The EU institutions are used as privileged political opportunity structures because the situation is so unfavourable if not hostile for them on a national level. Indeed, *LGBTI-free zones* were first defended by the Polish government, notably by the Minister of Justice Zbigniew Ziobro whose response to the first suspension of EU funds for *LGBTI-free* municipalities was not only to compensate for the loss of funding, but to reward them with more money than they were entitled to⁶⁸. Moreover, civil society has been weakened by PiS since 2016, which introduced new laws to limit access to grants by creating the “National Institute for Freedom”, a non-independent body in charge of distributing funds to associations⁶⁹. In this context, it is clear that LGBTI rights organisations have been completely isolated at the national level. Polish activists have drawn European attention to the existence of *LGBTI-free zones*, as Bart Staszewski has done through a series of photo portraits of residents of cities that have passed an anti-LGBTI resolution, with a yellow sign at the city entrance indicating "*LGBT-free zone*" in several languages, in the background.

⁶⁷ O'Dwyer, C. (2010). From Conditionality to Persuasion? Europeanization and the Rights of Sexual Minorities in Post-Accession Poland. *Journal of European Integration*, 32(3), 229–47; O'Dwyer, C. (2012). Does the EU Help or Hinder Gay-Rights Movements in Post-Communist Europe? The Case of Poland. *East European Politics*, 28(4), 332–52

⁶⁸ Polish “LGBT-Free” Town Gets State Financing after EU Funds Cut. (2020, August 18). *Reuters*.

⁶⁹ Bakke, E., & Sitter, N. (2022). The EU's *Enfants Terribles*: Democratic Backsliding in Central Europe since 2010. *Perspectives on Politics*, 20(1), p.26



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With the aim of 'bypassing' the Polish government, activists sought to invest the European level and use Europe as a 'political resource'. I will base my discussion of this argument on Sudbery's article⁷⁰ on the political resources drawn from the European institutions by Polish feminist NGOs - NGOs close to LGBTI ones. Sudbery distinguishes 4 forms of political resources used by NGOs: **arenas, policy instruments, funding programmes** and **point of reference**. Activists did mobilise these types of resources to mobilise against *LGBTI-free zones*:

- 1) The **European arena** being more inclusive of civil society, allowed national activists such as *Kampania Przeciw Homofobii* - Campaign Against Homophobia (KPH), to access a transnational European network (ILGA-Europe, forbidden colours), giving visibility to *LGBTI-free zones*.
- 2) Polish activists relied on a base of **European policy and legal instruments** referring to the Charter of Fundamental Rights or the Treaties. When asked about the advantages of the EU for his activism, Jakub Gawron, co-founder of the Atlas of Hate described below, explained: "The EU is made up of principle of non-discrimination In addition, it uses not only its political, but also economic power, to defend it. Therefore, it is a key ally of the Polish LGBTI community"⁷¹.

⁷⁰ Sudbery, I. (2010) The European Union as Political Resource: NGOs as Change Agents? *Acta Politica*, 45(1), 136–57

⁷¹ Jakub Gawron, Appendix 1e, p.3

- 3) LGBTIQ activist organisations in Poland have also been able to benefit from **European funding**. This is the case of KPH which on its webpage mentions the EU, the European Commission, and the Council of Europe among the organisation's sources of funding.
- 4) The EU has been used as a **point of reference** and **source of symbolic resources** by LGBTI activists. Ayoub and Paternotte explain in this sense that "While being marginal within EU policies, LGBT rights have become a powerful symbol of Europe"⁷². In their advocacy, activists fighting against *LGBTI-free zones* have used Europe as a repository of inclusive values.

Thus, Polish activists' "usages of Europe", as defined by Jacquot and Woll⁷³ are multidimensional. The *scale shift* allows them to change the configuration of power relations by relying on a different corpus of values and on the normative power of the EU⁷⁴ although limited when it comes to sexual minority rights⁷⁵. In the case of *LGBTI-free zones*, this shift has also allowed activists to gain allies and political capital in the European Parliament and more specifically in its LGBTI intergroup.

The LGBTI Intergroup of the European Parliament

With 157 MEPs members, the LGBTI intergroup is the biggest intergroup of the European Parliament. Active since 1997, this cross-party intergroup gathers Members of European Parliament (MEPs) from all 27 EU countries and 5 political groups, from The Left to the European People's Party. A full-time Secretary-General is in charge of the intergroup's daily activities: reporting LGBTI news, coordinating members' position on LGBTI-related legislation and monitoring the links with European LGBTI civil society organisations.

The cooperation between the Intergroup and LGBTI NGOs has been identified as an "EU elite response to LGBT issues around Europe"⁷⁶. Then, it is not surprising that an activist initiative

⁷² Ayoub, P., & Paternotte, D. (2014). *LGBT Activism and the Making of Europe*, p.3

⁷³ Jacquot, S., & Woll, C. (2004). *Les Usages de l'Europe. Acteurs et Transformations Européennes*. L'Harmattan

⁷⁴ Manners, I. (2002). Normative Power Europe: A Contradiction in Terms? *JCMS: Journal of Common Market Studies*, 40(2), 235–58

⁷⁵ Mos, M. (2013). Conflicted Normative Power Europe: The European Union and Sexual Minority Rights. *Journal of Contemporary European Research*, 9(1), 78-93

⁷⁶ Ayoub, P. (2013). Cooperative transnationalism in contemporary Europe: Europeanization and political opportunities for LGBT mobilization in the European Union. *European Political Science Review*, 5(2), p.285

linked to *LGBTI-free zones* quickly gained recognition by the LGBTI intergroup. This is the Atlas of Hate.

The Atlas of Hate

The *Atlas Nienawiści* is an initiative of four Polish LGBTI activists (Jakub Gawron, Kamil Maczuga, Paulina Pająk, Pawel Preneta) which has started in 2019. It is a digital tool accessible online⁷⁷. First, a spreadsheet serves as a database listing Polish local authorities that have passed an anti-LGBTI resolution, the resolutions passed with their date, the members of the local council that passed the resolution and whether the resolution was withdrawn. Linked to this spreadsheet is a map of Poland identifying the *LGBTI-free zones* and their status, i.e., whether the resolution is still in force or not.

Jakub Gawron, co-founder of the Atlas of Hate explains:

The atlas has two purposes. The first is to gather a knowledge base about the zones. The second is to keep the subject of zones in the public debate (on local, national, European and international level) and put pressure on councillors for so long that they finally repeal these resolutions⁷⁸

From the outset, the initiative aims to reach the European decision-making level. The Atlas of Hate was very well received by the LGBTI Intergroup which sets itself the mission to be "a bridge to civil society", according to Miguel Chambel, Secretary-General of the Intergroup⁷⁹. In this sense, the LGBTI Intergroup has given visibility to the initiative, inviting the founders of the Atlas of Hate to the EP and organising a press conference for them to present their map⁸⁰. In addition, the members of the Intergroup enabled the nomination of the Atlas of Hate activists to the Sakharov Prize for Freedom of Thought in September 2020⁸¹. Although they did not win the Prize, the Atlas of Hate, supported by the LGBTI Intergroup, shows that the EU is still an effective political opportunity structure for Polish activists.

The first section of the paper explored how *LGBTI-free zones* were Europeanised, that's to say framed under European terms. Analysing the way both anti-gender and pro-LGBTI actors

⁷⁷ Gawron, J., Preneta, P., Pająk, P., & Maczuga, K. (2019). Atlas nienawiść [Atlas of Hate]. Retrieved May 8, 2023, from <https://atlasnienawisci.pl/>

⁷⁸ Jakub Gawron, Appendix 1e, p.3

⁷⁹ Miguel Chambel, Appendix 1c, p.2

⁸⁰ Miguel Chambel, Appendix 1c, p.4

⁸¹ Directorate General for Communication. (2020, September 29). Sakharov Prize 2020: the nominees. *European Parliament News*.

referred to the EU highlighted a bottom-up Europeanisation of LGBTI rights. The way PiS leaders and Polish activists interacted at a national level making a different use of Europe shows how effective the Europeanisation of, at least the idea of, LGBTI rights is successful.

2. Addressing *LGBTI free-zones* in a committed yet weak and divided European political arena, the (geo)political limits to Europeanisation of LGBTI rights

If the only existence of overtly discriminatory areas in the EU shows the ineffectiveness of Europeanisation of LGBTI rights, several limits of such Europeanisation can be highlighted from the European institutions' response to *LGBTI-free zones*. Indeed, when entering the European political arena, such culture wars-related issue can hardly be addressed by institutions and tend to polarise European politics.

This part will thus discuss how *LGBTI-free zones* some political and geopolitical limits to the Europeanisation of LGBTI rights, notably the weakness of the most LGBTI-friendly European institutions and the sexual division of Europe.

The European Parliament and the Council of Europe: most committed, least powerful?

Responding to the expectations of Polish LGBTI activists, the European Parliament (EP) was the first institution to take up the issue of *LGBTI-free zones*. Indeed, in December 2019, it adopted a resolution mentioning and condemning *LGBTI-free zones* for the first time⁸².

A resolution is a non-legislative act which aims to express the European Parliament's position on any subject and is adopted by a majority of Members of European Parliament (MEPs). The proposal of a resolution is also an opportunity for the European Parliament to play its role as a "very active forum"⁸³ and to animate the European public space. It is common for the EP to

⁸² European Parliament Resolution 2019/2933 of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones [2019] OJ C255/7

⁸³ Costa, O. (2014). Que peut le Parlement européen ? *Pouvoirs*, 149(2), p.78

adopt resolutions on the violation of human rights in the world, this is part of the EP's long tradition of defending human rights⁸⁴, and LGBTI rights in particular⁸⁵.

While the 2019 resolution was quite typical and did not have a strong media and political rationale, a second resolution adopted on 11 March 2021 met with a strong echo: this was the EP resolution declaring the EU as an *LGBTIQ-freedom zone*⁸⁶. This resolution was initiated by MEP Pierre Karleskind (France, Renew). The main motivation behind this resolution was symbolic: "Comme ce sont des résolutions symboliques, on s'est dit qu'on allait répondre sur le plan symbolique."⁸⁷ as summarised by Victor Belaud, Accredited Parliamentary Assistant (APA) of MEP Pierre Karleskind. The final wording of *LGBTIQ-freedom zone* was chosen because it directly echoed the *LGBTI-free zones* by invoking freedom, a value which is at the core of the identity of Renew Europe as a liberal political group in the EP⁸⁸. In order for the resolution to be adopted by a large majority of MEPs, the Intergroup sought the support of the European People's Party (EPP). Pierre Karleskind explained that he had sought the support of Roza Thun, a strategic MEP as being Polish and a member of the EPP: "Et donc j'appelle Roza Thun qui me dit (...) qu'elle aborderait mon sujet pour le mettre à l'ordre du jour au PPE. Donc c'est comme ça que le PPE est rentré dedans, il y a eu, il est vrai, au PPE un changement"⁸⁹. For instance, the resolution declaring the EU as an *LGBTIQ-freedom zone* was adopted by a large majority, giving it a symbolic aura and power to put pressure on other institutions, namely the Commission and the Council.

However, these resolutions are ultimately symbolic, non-binding⁹⁰, could be described as *soft law* and do not have an immediate impact on *LGBTI-free zones*. This is indicative of the legal limits to the enforcement and Europeanisation of LGBTI rights in the EU: the institution most inclined to promote these rights is also the least powerful to do so. The Secretary-General of the LGBTI Intergroup regrets the weak instruments at the disposal of the EP and especially the

⁸⁴ Gfeller, A. E. (2014). Champion of Human Rights: The European Parliament and the Helsinki Process. *Journal of Contemporary History*, 49(2), 390–409 ; Kulpa, R. (2014). Western leveraged pedagogy of Central and Eastern Europe: discourses of homophobia, tolerance, and nationhood, *Gender, Place & Culture*, 21(4), p.434

⁸⁵ Ahrens, P., Gaweda, B., & Kantola, J. (2022). Reframing the Language of Human Rights? p.817

⁸⁶ European Parliament Resolution 2021/2557 of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone [2021] OJ C474/140

⁸⁷ Victor Belaud, Appendix 1a, p.3

⁸⁸ Victor Belaud, p.3 ; Pierre Karleskind, Appendix 1b, p.2

⁸⁹ Pierre Karleskind, Appendix 1b, p.5

⁹⁰ Victor Belaud, Appendix 1a, p.2

absence of legislative initiative: "At the end of the day without capacity to initiate legislation, it's always limited to what is on the table"⁹¹.

Another European, but non-EU, institution that shares a tradition of defending the rights of sexual and gender minorities is the Council of Europe (CoE) and its European Court of Human Rights (ECtHR). Andrew Boff, a British member of the Congress of Local and Regional Authorities of the CoE, seating within the ECR group (equivalent to ECR in the EP), defends the CoE's achievements on LGBTI rights: "we have a long history of supporting LGBT rights around Europe and have managed to get adopted a number of measures that countries have signed up to in order to protect the rights of LGBTI people"⁹². I have sought to explore the role that the CoE institutions, notably the Commissioner for Human Rights and the Congress, have played in relation to *LGBTI-free zones*.

In December 2020, the Commissioner for Human Rights published a "Memorandum on the stigmatisation of LGBTI people in Poland"⁹³. One section of this memorandum was dedicated to *LGBTI-free zones* and clearly states that "far from being merely words on paper, these declarations and charters directly impact the lives of LGBTI people in Poland"⁹⁴ to which the Polish government responded "that the accusations concerning the alleged *LGBT-free zones* seem to be misleading and designating cities in this way could be considered detrimental to the local communities"⁹⁵. The memorandum from the Commissioner for Human Rights is cited in the EP resolution declaring the EU an *LGBTIQ-freedom zone*, along with another report issued by the Congress of Local and Regional Authorities of the CoE. Andrew Boff was the rapporteur of this text on the need for local and regional authorities in Poland to withdraw their anti-LGBTI resolutions, which was adopted in May 2021 by the Congress⁹⁶. In the preparation of a resolution, he conducted a fact-finding report, together with Yoomi Renström, a Swedish socialist member of the Congress of the CoE. They met with several Polish actors, both LGBTI activists and national and local anti-LGBTI elected officials. Like the EP resolutions, these

⁹¹ Miguel Chambel, Appendix 1c, p.8

⁹² Andrew Boff, Appendix 1f, p.1

⁹³ Commissioner for Human Rights. (2020). *Memorandum on the Stigmatisation of LGBTI People in Poland*. Council of Europe

⁹⁴ *Ibid.* pp.5-6

⁹⁵ Republic of Poland. (2020). *Comments of the Government of the Republic of Poland to the Commissioner for Human Rights' Memorandum on the Stigmatisation of LGBTI people in Poland*

⁹⁶ Boff, A. (2021). *The Role of Local and Regional Authorities with Regard to the Situation of LGBTI People in Poland*. Congress of Local and Regional Authorities of the Council of Europe

reports adopted by the Congress have no binding value and are mainly aimed at drawing attention to the situation and putting pressure on Polish local governments.

As for the European Court of Human Rights (ECtHR), it sets conditions for its referral that limit its ability to act against Polish citizens discriminated by the existence of *LGBTI-free zones*. According to Article 47 of the ECtHR's Rules of Court, all possible remedies at national level must be exhausted before a case can be brought before the Court. In the Polish case, the Supreme Administrative Court has already declared the anti-LGBTI resolutions illegal⁹⁷, but this has not been sufficient for the local authorities concerned to reverse their decision.

In our interview, Rémy Bonny, Executive Director of Forbidden Colours, a Brussels-based NGO defending LGBTI rights in Europe, expressed a rather interesting opinion on the role of the Council of Europe:

The Commissioner for Human Rights has been sending out statements every time, every single time that something happens in whatever country on LGBTQ rights. But again, it's just statements and it's a good tool maybe to raise a little bit of attention with other member states, about what is happening in certain member states. But for us, we don't see them as a key partner because the influence that they actually have is very small.⁹⁸

Thus, a paradox is highlighted: the institutions most committed to LGBTI rights - the EP and CoE who have quickly reacted to *LGBTI-free zones* - are the least powerful to provide concrete sanction. Their response is limited to publicising the issue and political pressure. Moreover, in his article on the “Pink Agenda” promoted by the Council of Europe, Ammaturo insists that “the Council of Europe can contribute to framing and articulating a notion of European citizenship based on the creation of moral hierarchies between *insiders* and *outsiders*”⁹⁹. The divisions within Europe on the issue of LGBTI rights now need to be explored in further detail.

***LGBTI-free zones* questioning a “sexual division” of Europe**

⁹⁷ Ptak, Alicja. (2022, June 29). Polish Top Court Upholds Annulment of Anti-LGBT Resolutions. *Notes From Poland*; Jakub Gawron, Appendix 1e, p.2

⁹⁸ Rémy Bonny, Appendix 1g, p.9

⁹⁹ Ammaturo, F. R. (2015). The “Pink Agenda”, p.1152

I argue that one (geo)political limit to the Europeanisation of LGBTI rights is the sexual division of Europe. This division mentioned by Chetaille in her article "Another homophobic Europe?"¹⁰⁰ is to be understood through the prism of culture wars. Indeed, the LGBTI issue, as an emotional and controversial subject, does not escape the logic of polarisation, typical of culture wars, and penetrates EU politics, as argued by Breiding¹⁰¹.

"Culture wars" refers to a form of political struggle for cultural hegemony, as defined by Gramsci, which involves the polarisation of public opinion around issues related to cultural values (heritage, tradition, family, sexuality, religion). *LGBTI-free zones* are a peak of the culture wars in Poland¹⁰², as Bucholc states: "the decades-long culture war has culminated in the 2020 anti-LGBTIQ campaign in Poland"¹⁰³. Indeed, this is what it is all about, since the anti-LGBTI ideology resolutions include the phrase "*Radykałowie dążący do rewolucji kulturowej w Polsce*" ("Radicals seeking a cultural revolution in Poland")¹⁰⁴. In this case, the issue of LGBTI rights is part of what Hesová calls the "politics of morality"¹⁰⁵, which include the sexual dimension of culture wars. Because *LGBTI-free zones* are an object of culture war, it polarises within the European institutions themselves which limits the Europeanisation of LGBTI rights.

The notion of a sexual division of Europe relies on a simple and simplistic dichotomy and reignites the East/West division. I would argue that this division is not only geopolitical but also political and is played out between as well as within political groups. To assess the relevance of a "sexual division" through the example of *LGBTI-free zones*, I conducted an in-depth analysis of the EP resolution declaring the EU an *LGBTIQ-freedom zone*. The resolution was adopted by 492 in favour, 141 against and 46 abstentions, with political groups voting as shown in **Fig. 1**.

¹⁰⁰ Chetaille, A. (2013). Une « autre Europe » homophobe ? L'Union européenne, le nationalisme polonais et la sexualisation de la « division Est/Ouest ». *Raisons politiques*, 49(1), 119–40

¹⁰¹ Breiding, M. (2022). Between Warring Parties: Culture Wars over LGBT+ Equality. *Illiberal Studies Program: Culture Wars Papers*, 15, p.1

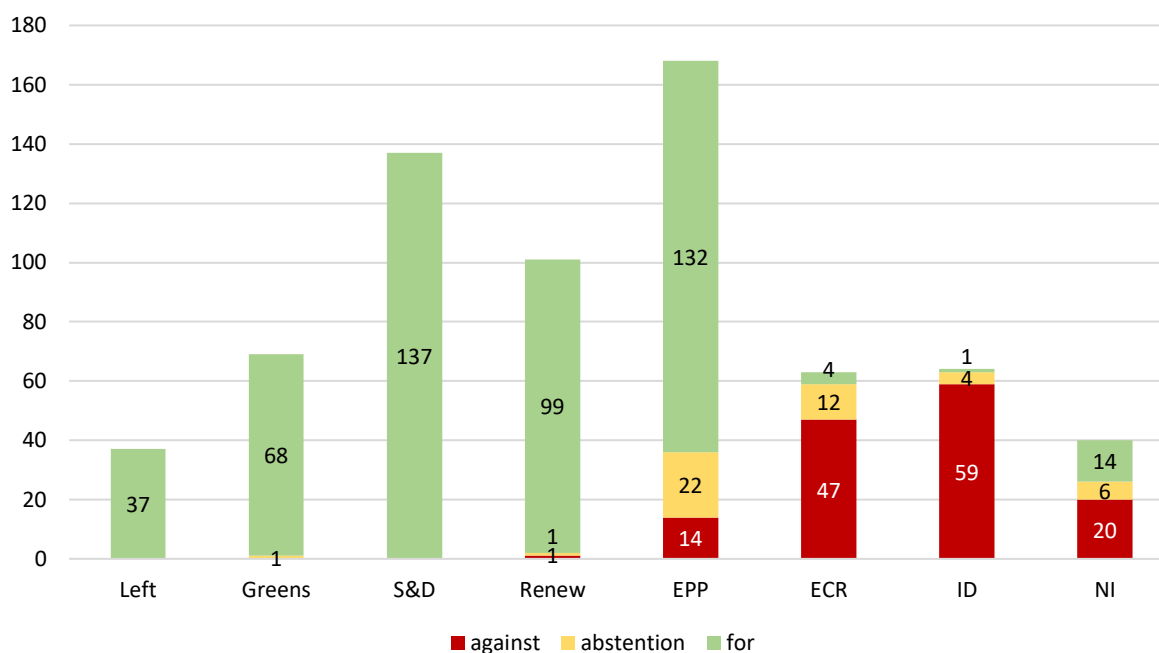
¹⁰² On Culture wars in Poland, see Barša, P., Hesová, Z., & Slačálek, O. (2021). *Central European Culture Wars: Beyond post-communism and populism*

¹⁰³ Bucholc, M. (2022). The Anti-LGBTIQ Campaign in Poland

¹⁰⁴ Powiat świdnicki [Świdnica district]. (2019, March 26). *Stanowisko Nr 1/2019 w sprawie powstrzymania ideologii „LGBT” przez wspólnotę samorządową [Position Statement No. 1/2019 on the containment of 'LGBT' ideology by the local government community]*

¹⁰⁵ Hesová, Z. (2021). Three Types of Culture Wars and the Populist Strategies in Central Europe. *Politologický Časopis - Czech Journal of Political Science*, 28(2), p.138

Fig. 1 - Voting Results on the adoption of the resolution declaring the EU an LGBTIQ-freedom zone



While this resolution is only a symbolic instrument, it is indicative of the political polarisation around LGBTI issues within the EP itself, and by extension in the EU. This is why it is relevant to observe how the positions of the different political groups were defined, to question the cleavage that was formed on the adoption of the resolution but also on the forms of appropriation or contestation of the resolution according to the political groups.

Here, I will mobilise a theoretical framework defined by Ahrens, Gaweda and Kantola. in their article "Reframing the Language of Human Rights?" published in 2022¹⁰⁶. They question the existence of a new transnational political cleavage *GAL* (Greens, Alternatives, Libertarians) vs. *TAN* (Traditionalists, Authoritarians, Nationalists)¹⁰⁷ in the EP, operating on issues of gender equality and LGBTI rights. They classify European political groups into three categories: **the “defenders”** (Left, Greens, S&D and Renew), **the “reframers”** (ID and ECR) and **those “sitting on the fence”** (EPP). I applied this theoretical framework on *LGBTI-free zones*,

¹⁰⁶ Ahrens, P., Gaweda, B., & Kantola, J. (2022). Reframing the Language of Human Rights?

¹⁰⁷ For further information on GAL vs. TAN cleavage, see Hooghe, L. & Marks, G. (2018). Cleavage theory meets Europe’s crises: Lipset, Rokkan, and the transnational cleavage, *Journal of European Public Policy*, 25(1), 109-135

analysing the EP session on the adoption of the resolution declaring the EU an *LGBTIQ-freedom zone* to examine the positions and arguments put forward by MEPs according to their political group.

Table 1 - *Main ideas from MEPs’ speeches during the debate on the resolution declaring the EU an ‘LGBTIQ-freedom zone’ (European Parliament, 10 March 2021)*

The defenders	Those sitting on the fence	The reframers
Left, S&D, Greens, Renew	EPP	ECR, ID
<i>Direct criticism of Polish and Hungarian governments</i>	<i>Attachment to Christian-democrat values and to the family</i>	<i>Denial of LGBTI discriminations in Poland</i>
<i>Emphasis on freedom, equality, inclusion values</i>	<i>Protection of (LGBTI) children</i>	<i>LGBTI framed as “leftist ideology” and “propaganda” from Western Europe</i>
<i>Personal speeches (1st person)</i>	<i>Congratulating the action of the Commission</i>	<i>Protection of children and traditional marriage</i>
<i>Human rights framing</i>		<i>National sovereignty</i>
<i>Demanding more from the Commission</i>		<i>Blame on Islam and immigration (homonationalism¹⁰⁸)</i>

As this table shows, the “defenders” group seems effective. On the other hand, ECR and ID are confused in their stance: both resort to anti-EU rhetoric, deny the existence of LGBTI hate speech by the Polish government and instrumentalise the LGBTI cause for an anti-immigration agenda, blaming the rise of Islamism in Europe. While supporting the resolution, MEPs from the EPP put forward specific arguments: they acknowledge the defence of LGBTIQ rights by invoking the need to protect LGBTIQ children, and by recalling their attachment to the family and Christian values. In this sense, a sentence from the speech of MEP Roberta Metsola (Malta, EPP) is particularly telling: “I am a mother of four. I have been able to be married to my husband

¹⁰⁸ Homonationalism consists in the instrumentalisation of LGBTI rights in a nationalist discourse. See Freude, L. & Vergés, B. N. (2020). Homonationalism in Europe? A Quantitative Comparison of the Values of Europeans. *Sexuality & Culture*, 24, 1292–1314

for 15 years. I am a Christian Democrat and a proud southern European woman. Tradition is something I respect, and so are our values, all of our values.”¹⁰⁹.

The ambivalent position of the EPP raises questions, especially as it is the largest political group in the EP, representing the largest political force in the Union. It is probably an internal political challenge for the group, as Pierre Karleskind summarises:

Le PPE s’il veut se distinguer, il va falloir qu’il trouve quelques éléments pour ratisser un peu plus large. Soit ils se font étouffer par une droite réactionnaire, soit ils décident de s’élargir (...). Cette résolution a aussi participé de cette ouverture du PPE sur les sujets sociétaux.¹¹⁰

The still uncertain position of the EP on these issues reveals a political limit to the defence of LGBTIQ rights by the EU.

From a geopolitical point of view, the East/West divide is illustrated by the positions adopted towards *LGBTI-free zones*. Indeed, in discursive terms, ECR MEPs speaking before the adoption of the resolution denounced a decadent West, for example MEP Patryk Jaki, a member of PiS, exclaimed "You want to teach Poland your new culture" while addressing the hemicycle"¹¹¹. To complete the observation of this sexual division of Europe, I have adopted a more quantitative approach by focusing on the variable “nationality” of MEPs.

Comments on methodology

To analyse and question the relevance of a sexual division of the EU between Western and Eastern countries, I have established two simple categories of countries:

- **"East"** covering the CEECs, i.e. Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia and the Czech Republic from the 2004 enlargement, Bulgaria and Romania (2007) and Croatia (2013).
- **"West"** comprising all the other EU countries.

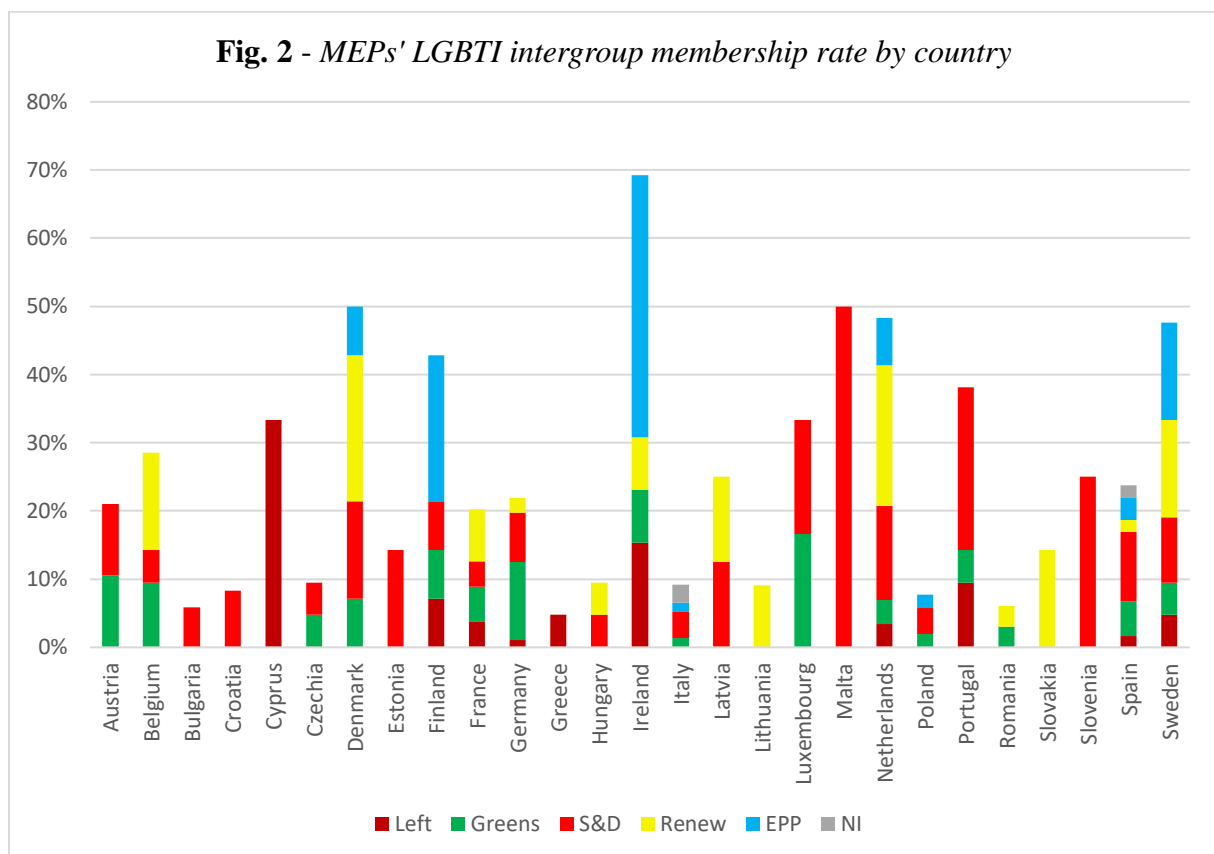
¹⁰⁹ Metsola, R. (2021, March 10) *Declaration of the EU as an LGBTIQ-freedom zone* [Debate transcript]. European Parliament. https://www.europarl.europa.eu/doceo/document/CRE-9-2021-03-10-ITM-011_EN.htm

¹¹⁰ Pierre Karleskind, Appendix 1b, p.5

¹¹¹ Jaki, P. (2021, March 10). *Declaration of the EU as an LGBTIQ-freedom zone* [Debate transcript]. European Parliament.

This division of Europe on issues of gender and sexuality is quite consensual among scholars¹¹², especially in the cultural wars approach which underlines common trends within the CEE region¹¹³.

Using the categories “East” and “West”, I examined the membership rates within the LGBTI intergroup by nationality, based on the data available on its webpage¹¹⁴. A revealing finding is that around one in ten MEPs from the East is a member of the intergroup compared to one in four “West” MEPs.



Two observations can be drawn from **Fig.2**. Firstly, the LGBTI intergroup membership rate is unsurprisingly higher among Western European countries' MEPs, but it is also relevant to note that the few EPP members of the Intergroup are almost exclusively from Western Europe. Observing the membership rates of the LGBTI intergroup shows a more frequent commitment to LGBTI rights in the West, including by the right-wing. But this is not enough to show a

¹¹² Chetaille, A. (2013). Une « autre Europe » homophobe ? p.120

¹¹³ Barša, P., Hesová, Z., & Slačálek, O. (2021). *Central European Culture Wars: Beyond post-communism and populism* ; Hesová, Z. (2021). Three Types of Culture Wars and the Populist Strategies in Central Europe.

¹¹⁴ The European Parliament's LGBTI Intergroup (n.d.). Members. MEPs who joined the LGBTI Intergroup in 2019-2024. Retrieved May 8, 2023, from <https://lgbti-ep.eu/who-we-are/members/>

rejection of the LGBTI cause, nor a rejection of the denunciation of *LGBTI-free zones* by Eastern European MEPs.

Thus, I also analysed in detail the results of the vote on the resolution declaring the EU as an *LGBTI-freedom zone*, using the voting record from the *VoteWatch Europe dataset*¹¹⁵. However, the East/West dichotomy is quite simple to observe given the majority and ruling political tendencies in Eastern Europe, such as the PiS in Poland. What is interesting to point out however is that within the same European political group the national delegation remains quite decisive on the position on LGBTI issues. This is one of the findings of the article by Ahrens, Gaweda and Kantola, arguing that "framing strategies depend strongly on the respective national delegation and the political group position (is) less consistent"¹¹⁶. This can be seen in the EPP voting results. Indeed, **Table 2** shows that "East" MEPs make up the majority (around two thirds) of the abstentions and "against" votes of the EPP; while these MEPs are outnumbered in the group.

Table 2 – Contribution to EPP's "abstention" and "against" votes on the resolution declaring the EU as an LGBTIQ freedom zone, by category of origin of MEPs

Category	Votes			
	Abstention		Against	
	Nb. of votes	(%)	Nb. of votes	(%)
<i>East</i>	15	68%	9	64%
<i>West</i>	7	32%	5	36%
	22	100%	14	100%

These findings further enrich the sexual division of Europe by focusing on the case of the EPP which is "sitting on the fence" when it comes to LGBTI rights, as the weight of nationality appears to be important in determining positions. If this can be observed within the EP on the

¹¹⁵ Hix, S., Fratescu, D., Hagemann, S. & Noury, A. (2022). *VoteWatch Europe Dataset* [Data set]. EUI Research Data, Department of Political and Social Sciences

¹¹⁶ Ahrens, P., Gaweda, B., & Kantola, J. (2022). Reframing the Language of Human Rights? p.816

adoption of a resolution, it can also be found within the Congress of Local and Regional Authorities of the Council of Europe. Its members sit within transnational political groups where the “nationality” variable also partly explains the divisions on gender and sexuality issues. When asked about his position as an LGBTI rights’ defender seating in the same political group as Polish PiS leaders, who are responsible for the Polish anti-LGBTI resolutions, Andrew Boff answered: "It's more about geography and tradition rather than where you are on the political spectrum" and “What struck me most about doing that investigation (in Poland) was that I heard language used about LGBT people that I haven’t heard in the UK for about 40 years.”¹¹⁷.

I aimed to show that the sexual division of Europe is a political limit to the Europeanisation of LGBTI rights and the adoption of LGBTI-friendly legislation. On the other hand, it seems important to highlight that falling into a binary view of the defence of LGBTI rights is in itself a further political limit to the Europeanisation of LGBTI rights. Focusing on the dichotomy between an LGBTI-friendly Western Europe and a homophobic Eastern Europe would conceal the disparities in the West, for example the case of Italy, and invisibilise the progressive paths taken by some Eastern European countries. Binnie and Klesse also explain that this dichotomy would fuel a western patronising attitude in relations between LGBTI activists in Europe¹¹⁸. Moreover, invited on 21 April 2023 by the French public broadcaster *LCP* to a "La faute à l'Europe" show dedicated to LGBTI rights in Europe, Pierre Karleskind also insisted on the importance of nuancing the East/West sexual division:

Mais attention ! Vous prenez la Slovénie qui va introduire le mariage pour tous, vous prenez l’Estonie qui dans son programme de gouvernement va introduire aussi le mariage. Et je prends un autre exemple, c’est l’Ukraine qui va délibérer sur l’introduction du Pacte civil de solidarité, l’équivalent du PACS français¹¹⁹.

¹¹⁷ Andrew Boff, Appendix 1f, pp.2-3

¹¹⁸ Binnie, J., & Klesse, C. (2014) Transnational solidarities and LGBTQ Politics in Poland. In P. Ayoub & D. Paternotte (eds) *LGBT Activism and the Making of Europe: A Rainbow Europe?* (pp.193-211). Palgrave MacMillan.

¹¹⁹ Pierre Karleskind. (2023, April 21). La Faute à l’Europe : Les droits LGBT au cœur d’une bataille idéologique [Video]. Youtube. <https://www.youtube.com/watch?v=VrivPBOA9N8&pp=ygUgbGEgZmF1dGUgw6AgbCdldXJvcGUgZHJvaXRzIGxnYnQ%3D>

The risk of the imposition of progress towards LGBTI rights by the EU is to promote “a new form of (West) European cultural imperialism”¹²⁰ which is also an important limit, as LGBTI rights’ defenders inside European institutions have to be cautious.

The important thing to remember however, is that *LGBTI-free zones* are embedded in the culture wars and that some European institutions namely the EP and the CoE are very active in this battle of ideas. On the other hand, these are institutions without strong powers of direct action on LGBTI rights, they are limited to a role of publicisation or lobbying/political pressure. Their assembly form materialises the polarisation of the debate on LGBTI rights in Europe and the debate on the resolution “EU as an *LGBTIQ freedom zone*” illustrates the political and geopolitical divisions on sexual issues.

According to Mos, these internal inconsistencies prevent the EU and the European Commission from being strong on LGBTI issues¹²¹. The limits of Europeanisation thus seem to be partly explained by a sexual division of the EU, but these observations lead us to question the response of the European Commission to *LGBTI-free zones*, in its quality of *guardian of the Treaties*.

3. Sanctioning *LGBTI-free zones* along with rule of law infringements, how to enforce EU values and LGBTI rights?

“*LGBTI-free zones* are *humanity-free zones*. And they have no place in our Union.”¹²². In her State of the Union 2020, the President of the European Commission (EC), Ursula von der Leyen, made clear her opposition to *LGBTI-free zones*, stating that they were contrary to the values of the European Union (EU). These values have often been invoked by the European institutions in the face of the decline of the liberal democratic model in Europe, of which Poland is a prime example. Scholars studying this phenomenon refer to it as “democratic backsliding”. Most of the literature on the topic – but also European political leaders - focuses on rule of law

¹²⁰ Ayoub, P., & Paternotte, D. (2019). Europe and LGBT Rights: A Conflicted Relationship. In Michael J. Bosia, Sandra M. McEvoy, and Momin Rahman (eds), *The Oxford Handbook of Global LGBT and Sexual Diversity Politics* (pp. 153–167). Oxford University Press

¹²¹ Mos, M. (2013). Conflicted Normative Power Europe: The European Union and Sexual Minority Rights. *Journal of Contemporary European Research*, 9(1), 78-93

¹²² Von der Leyen, U. (2020, September 16). State of the Union Address at the European Parliament Plenary [Speech]. European Commission.

and the independence of justice system, neglecting other fundamental rights. However, Oleart and Theuns advocate for a broader conception of “democratic rights” going beyond the depoliticised and restrictive conception of democratic backsliding as a rule of law backsliding¹²³. They argue that other democratic rights, including human rights tend to be forgotten. What about LGBTI rights?

This third section discusses how the EC has been sanctioning *LGBTI-free zones*, analysing the use or non-use of different tools: infringement proceedings, Article 7 and conditionality of European structural funds.

Enforcing Rule of Law and LGBTI rights: same instruments, same political priority?

Relations between the EU and Poland have been marked since 2015 by tensions around breaches of the rule of law as the PiS has gradually undermined the independence of the Polish judiciary. As the rule of law is a key value of the EU, its institutions have condemned and sanctioned Poland's infringements. It is clear that both democratic backsliding and the regression of LGBTI rights in Poland are the results of the illiberal policies of the PiS¹²⁴. Indeed, if *LGBTI-free zones* could spread in Poland, it is because the government undermined the independence of judiciary powers, as argued by Ploszka: “(Democratic backsliding) leads to a situation where domestic safeguards of the rule of law, as well as those related to human rights protection, have been significantly weakened”¹²⁵. Furthermore scholars such as Takács and Szalma¹²⁶, have shown that the democratic deficit is correlated with a weak level of guarantee of LGBTI rights, Poland’s democratic backsliding being one example. It is then not surprising

¹²³ Oleart, A., & Theuns, T. (2022). “Democracy without Politics” in the European Commission’s Response to Democratic Backsliding: From Technocratic Legalism to Democratic Pluralism. *JCMS: Journal of Common Market Studies*, 1–18

¹²⁴ Hesová, Z. (2021). Three Types of Culture Wars and the Populist Strategies in Central Europe. p.135 ; Yermakova, O. (2021). PiS vs LGBT: The “Othering” of the LGBT Movement as an Element of Populist Radical Right Party Discourse in Poland. *Sprawy Narodowościowe*, 53, 1-28

¹²⁵ Ploszka, A. (2023). From Human Rights to Human Wrongs. How Local Government Can Negatively Influence the Situation of an Individual. The Case of Polish LGBT Ideology-Free Zones. *The International Journal of Human Rights*, 27(2), 359-379

¹²⁶ Takács, J., & Szalma, I. (2020). Democracy Deficit and Homophobic Divergence in 21st Century Europe. *Gender, Place & Culture*, 27(4), 459–78

that ILGA-Europe, the main EU-level LGBTI NGO, has produced a specific report on the rule of law in which it asserts that:

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. This is particularly the case in Poland, where the Ministry of Justice uses its powers to repeatedly appeal verdicts that were in favour of LGBTI defendants¹²⁷.

I would argue that the EC has responded to both issues by following a common sanctions framework, using two types of instruments: the infringement procedure and the conditionality mechanism. However, I intend to question the fact that LGBTI rights are considered of the same importance as the rule of law in the way the EC addresses them.

A quick summary of the infringement proceedings against Poland on the issue of the rule of law is necessary to better understand the proceedings on the LGBTI issue. Starting in December 2017, the European Commission launched several infringement proceedings against Poland due to PiS-led reforms of the judiciary that undermine the independence of judges and the respect of the rule of law. The Commission went so far as to take Poland to the Court of Justice, which condemned Poland, imposing financial penalties as long as it would not comply with EU law. It was not until 2022 that the situation calmed down and the Commission observed improvements in Poland.

In parallel to these developments on the rule of law, the Commission launched in July 2021 an infringement procedure against Poland, but also against Hungary, for violations of LGBTI rights. As the Commission observed a lack of sincere cooperation from the Polish government¹²⁸, Poland has been called upon to respond to anti-LGBTI resolutions adopted by several Polish local authorities, i.e., *LGBTI-free zones*. However, unlike the rule of law infringement procedure that went all the way to the Court of Justice, the Commission has taken the decision to close the procedure against Poland on LGBTI rights infringements in January 2023. This decision has caused disappointment among Polish and European LGBTI NGOs and activists. For example, Jakub Gawron found “it’s a pity the Commission did close this infringement investigation”¹²⁹ while Justyna Nakieslka (KPH) said to *OKO.press* that “the

¹²⁷ ILGA-Europe. (2022). *2022 Rule of Law Report*. p.2

¹²⁸ Miguel Chambel, Appendix 1c, p.4

¹²⁹ Jakub Gawron, Appendix 1e, p.4

reaction of the Polish government was not satisfactory enough for the EC to end the proceedings”¹³⁰. But why were the infringement proceedings against LGBTI rights violations closed? The answer to this question leads to both legal and political arguments.

From a political point of view, one could ask whether this reflects a lack of priority given to LGBTI rights and a prioritisation of the rule of law and the independence of the judiciary over the rights of sexual and gender minorities.

In addition, one could question the lack of political will of the EU when it comes to LGBTI rights arguing that the Commission triggered Article 7 of the Treaty on European Union¹³¹ against Poland in December 2017 in response to breaches of the rule of law but did not do so in response to LGBTI rights violations. And yet, Article 7 is intended to respond to violations of EU values¹³² as Miguel Chambel, Secretary-General of the LGBTI Intergroup, points out: "that is the article that should be triggered if the values of the EU are not being respected, namely, the rights of minorities, non-discrimination, etc."¹³³. However, it should be noted that in any case, the literature shows that Article 7 is not a simple procedure to trigger, even less so in the current configuration of a Council where Hungary and Poland, the EU's "Enfants Terribles"¹³⁴, protect each other and may prevent any unanimity allowing the use of Article 7. Bakke and Sitter thus explain the failure to use Article 7 against Poland in December 2017 by the internal opposition within the EU coming from the EPP, whether there are MEPs or EPP-appointed commissioners¹³⁵.

Whilst these arguments seem to point to a lack of political will from the EC in sanctioning *LGBTI-free zones*, the infringement procedure on LGBTI rights was risky and not legally sound enough. Indeed, taking Poland to the ECJ led to two challenges: to be able to show evidence that the anti-LGBTI resolutions of Polish local authorities actually infringe on the rights of

¹³⁰ Ambroziak, A. (2023, February 15). Ujawniamy: KE zamknęła postępowanie przeciw Polsce ws. „stref wolnych od ideologii LGBT” [We reveal: EC closed proceedings against Poland over "LGBT ideology-free zones"]. *Oko.press*

¹³¹ Article 7 TEU provides for a political procedure in case of violations of EU values, as defined in Article 2 (which mentions non-discrimination), by a Member State. It ultimately provides for the possibility of depriving a Member State of its voting rights in the Council. However, this possibility has so far never materialised.

¹³² Akaliyski, P., Welzel, C., & Hien, J. (2022). A Community of Shared Values? p.571

¹³³ Miguel Chambel, Appendix 1c, p.9

¹³⁴ Bakke, E., & Sitter, N. (2022). The EU's *Enfants Terribles*: Democratic Backsliding in Central Europe since 2010. *Perspectives on Politics*, 20(1), p.27

¹³⁵ *Ibid.* p.32

LGBTI people, and to refer to a solid enough legal basis. In this sense, Maria Galewska, Programme Manager at the European Commission, DG REGIO's Poland Unit, states the following: “we would need to hire I don't know how many lawyers to prove that it is comprised in the Treaties and that an *LGBTI-free zone* is contrary to the Treaties.”¹³⁶. Rémy Bonny, who has a background as a political scientist, also admits the fragility of the legal arguments that the EC could have brought before the Court:

In the case of the infringement procedure against Poland, there they would have built mainly their arguments on the employment directive (...) but that was a very loose weak argument though because, we've heard that LGBTIQ people have been fired for instance in local schools, local city authorities and so on, but it's been very difficult to show evidence to court, against the member state¹³⁷.

Indeed, as the EU's competence in equality/family policies is weak outside the framework of employment or free movement, it can hardly respond to *LGBTI-free zones*.

Moreover, between the launch of the infringement procedure and its closure, there have been many developments on *LGBTI-free zones* as Rémy Bonny euphemistically puts it: “I think there were many disappointments around (the closure of the procedure) but there were a few things that happened in between though”¹³⁸. Indeed, while at the beginning of 2021 there were more than 100 *LGBTI-free zones* covering one third of the Polish territory, there has been a wave of withdrawal of anti-LGBTI resolutions from the summer of 2021. But what explains this move by the Polish local authorities?

No EU Values, No EU Funds. Introducing a mechanism of conditionality

If the rule of law conditionality regulation is adopted in 2020, it is not the one that the Commission has mobilised to prevent the granting of EU funds to projects run by Polish local authorities with anti-LGBTI resolutions. Miguel Chambel insists that it is not the rule of law conditionality that is relevant to the defence of LGBTI rights:

I think that sometimes there is a misconception as to what the conditionality does. And it doesn't, for instance, apply to human rights *per se*. It does apply to cases of systemic corruption, cases where the independence of the judiciary is threatened, cases where you cannot guarantee judicial

¹³⁶ Maria Galewska, Appendix 1d, p.4

¹³⁷ Rémy Bonny, Appendix 1g, p.4

¹³⁸ *Ibid.* p.5

independence. It doesn't necessarily apply to human rights violations. And that is maybe a problem, but it's also just a reality. Because I've heard organisations say, 'on the basis of the LGBTQ track record, this regulation should be triggered'. I would love for that to be the case, but that's not the scope of it.¹³⁹

As the rule of law conditionality is meant to protect the budget, not human rights, Pierre Karleskind highlights that it can hardly be used to target violations of LGBTI rights: “il faudrait montrer qu'une résolution discriminatoire sur le sujet LGBT viendrait mettre à mal le budget de l'UE... bon courage pour le faire, ça n'arrivera pas dans 15 ans”¹⁴⁰.

In fact, it was the Common Provisions Regulation (CPR)¹⁴¹ on European funds adopted in June 2021 that allowed the signatories of anti-LGBTI resolutions to be denied European funds and thus put pressure on them to revoke their resolution. The CPR establishes the common rules governing a set of European structural funds. It is Article 9(1) and 9(3) of this regulation that have been relevant in combating *LGBTI-free zones*, as they respectively state:

1. Member States and the Commission shall ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds.
3. Member States and the Commission shall take appropriate steps to prevent any discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation, implementation, monitoring, reporting and evaluation of programmes.

The European Parliament (EP) played an important role both in getting this clause added and in asking the Commission to enforce this regulation against Polish *LGBTI-free zones*. Victor Belaud, APA of Pierre Karleskind, explains:

Au tout début du mandat, [le CPR] a été voté, et une bataille du Parlement, ça a été d'ajouter à ce règlement une clause suspensive, une condition pour l'octroi des fonds. (...) Ça passe, sans réaction du côté polonais et hongrois qui n'ont pas dû réaliser sur le moment ce que ça

¹³⁹ Miguel Chambel, Appendix 1c, p.9

¹⁴⁰ Pierre Karleskind, Appendix 1b, p.3

¹⁴¹ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy [2021] OJ L231/159 (2021)

impliquerait. Et quand on voit ça avec Pierre (...) on va à la rencontre de toutes les DG REGIO et EMPL, ceux qui sont en charge des fonds européens, notamment dans les régions polonaises.¹⁴²

This nuances the image of the EP as a weak institution. It shows that it has a power of pressure, the MEP Pierre Karleskind, addressing the Commission, even mentioned in plenary session on 7 July 2021 the possibility for the EP to go to the Court¹⁴³.

In addition to the CPR, the Partnership Agreement on EU funds 2021-2027 concluded with Poland in June 2022 explicitly refers to the horizontal criteria defined by the CPR, namely the respect of the values of the EU Charter of Fundamental Rights including the principle of non-discrimination on the basis of sexual orientation. Maria Galewska was involved in the conclusion of the Partnership Agreement with Poland and in the addition of a specific reference to *LGBTI-free zones*:

Also, not only the Charter is in the regulation, but we also negotiated the programmes with the regions for the next seven years (...) what we have in the programme that was adopted by the Commission is a sentence saying: “no EU cohesion funds can go to municipalities that make any discriminatory resolution/action, or measure that go against the values of the treaties”.¹⁴⁴

The idea behind the introduction of this conditionality mechanism is similar to that of the rule of law. It can be summarised with the slogan *No EU values, No EU money* or with a simple rule “If you don’t discriminate ok, if you discriminate: out, you won’t get the money at all.”¹⁴⁵. It is important to note that this principle is not exclusive to the EU but as early as September 2020 the EEA and Norway Grants had suspended funding to Polish *LGBTI-free zones*; the Commission was actually inspired by this decision¹⁴⁶.

¹⁴² Victor Belaud, Appendix 1a, p.3

¹⁴³ Karleskind, P. (2021, July 7). *Breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the adopted legal changes in the Hungarian Parliament* [Debate transcript]. European Parliament. https://www.europarl.europa.eu/doceo/document/CRE-9-2021-07-07-ITM-008_EN.html

¹⁴⁴ Maria Galewska, Appendix 1d, p.3

¹⁴⁵ *Ibid.* p.3

¹⁴⁶ *Ibid.* p.5

Indeed, Poland is the largest recipient of EU cohesion funds which accounts for €76.5 billion¹⁴⁷, i.e., half of all public investment in the country¹⁴⁸. For Poland's poorest south-eastern regions, which happened to be *LGBTI-free zones*, the threat of not receiving EU funds is a strong incentive to revoke anti-LGBTI resolutions. In the summer of 2021, the European Commission addressed letters to Polish voivodeship authorities and by the end of September 2021, 4 of the 5 regions with anti-LGBTI resolutions had withdrawn them¹⁴⁹. Several smaller local authorities, *powiats* and *gminas*, followed and withdrew their discriminatory resolution. Polish activists welcomed the Commission's response to *LGBTI-free zones* through the introduction of this conditionality mechanism for EU structural funds. For instance, Bart Staszewski regularly shares news of *LGBTI-free zones* on his Twitter account¹⁵⁰ and frequently refers to the EU funds. Jakub Gawron from the Atlas of Hate says he is satisfied with the response of the EC and that it matched with the expectations of activists¹⁵¹. Finally, the rule of law conditionality required to be complemented by “other layers of protection of the EU budget”¹⁵² to be able to respond to violations to all EU values.

To date, there are still about 50 *LGBTI-free zones*, including the Łódź voivodeship. It is not surprising that some authorities still resist. Graff and Korolczuk explain that “mass support for modernisation brought by EU funding does not necessarily translate to acceptance of cultural and social transformation associated with sexual democracy. Polish Eurosceptics have capitalized on this gap by arguing that Poland has the right to benefit from European integration economically but must retain its cultural integrity as a Catholic country”¹⁵³.

The pressure on these discriminatory local authorities is not weakening. Indeed, some Polish regions are asking their constituent local authorities to repeal their resolution in order to receive EU funds. An excerpt from a letter from the Lublin voivodship to the municipality of

¹⁴⁷ European Commission. (2023) *EU Cohesion Policy: Partnership Agreement Poland*

¹⁴⁸ Pierre Karleskind, Appendix 1b, p.3 ; OECD. (2018, March). *Études économiques de l'OCDE : Pologne, Synthèse*. p.13

¹⁴⁹ Gawron, J., Prenta, P., Pająk, P., & Maczuga, K. (2019). Atlas nienawiść [Atlas of Hate] ; Ploszka, A. (2023). From Human Rights to Human Wrongs. How Local Government Can Negatively Influence the Situation of an Individual. The Case of Polish LGBT Ideology-Free Zones. *The International Journal of Human Rights*, 27(2), p.11

¹⁵⁰ Bart Staszewski [@BartStaszewski]

¹⁵¹ Jakub Gawron, Appendix 1e, p.4

¹⁵² Policy Department for Budgetary Affairs. (2023). *The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in context*. European Parliament.

¹⁵³ Graff, A., & Korolczuk, E. (2021). “Worse than Communism and Nazism Put Together”, p.87

Końskowola sent in early 2023¹⁵⁴ was shared by Bart Staszewski on his Twitter account and shows that the pressure to make *LGBTI-free zones* disappear is now being played out at regional and local level. In this letter, Lublin's authorities cite the Programme they signed with the European Commission saying it includes the following clause: “Cohesion policy funds will only be awarded to projects and beneficiaries who comply with anti-discrimination regulations referred to in Article 9(3) (of the Common Provisions Regulation)”.

While the window of opportunity opened by the rule of law crisis was useful for raising awareness on *LGBTI-free zones*, this opening seems to have closed in the context of a strong Polish commitment to the war in Ukraine and the reception of Ukrainian refugees. Also, the focus on LGBTI issues is now on Hungary where the situation is perhaps even more worrying with the government passing anti-LGBTI laws. Polish activists therefore hope that the conditionality mechanism for the allocation of EU funds, on which Polish territories rely heavily, will make them back down and agree to comply with the values of the EU, an EU that has declared itself an *LGBTIQ freedom zone*. These observations are important as they show the instruments used to enforce European values, the principle of non-discrimination and ultimately LGBTI rights.

¹⁵⁴ Appendix 2 Excerpt of a Letter sent by the Lublin voivodeship to the municipality of Końskowola (2023)

Conclusion

The case study of Polish *LGBTI-free zones* allowed for an assessment of the Europeanisation of LGBTI rights, exploring the multidimensional response of European institutions.

The first hypothesis made in the introduction of the paper questioned a bottom-up Europeanisation of LGBTI rights. *LGBTI-free zones* not only highlight the effective association between the EU and LGBTI rights, but they also show how the Europeanisation of the idea of LGBTI rights turns out to be effective. As a matter of fact, the EU has been successfully used as a political resource and platform for the claims of Polish activists with the LGBTI intergroup.

A second hypothesis I formulated was that *LGBTI-free zones* challenged European politics as they were a polarizing matter of culture wars. I validated such hypothesis using not only qualitative data collected from interviews, but also quantitative data based on EP's voting results and LGBTI intergroup's membership. I found that *LGBTI-free zones* crystallised a division in European politics based on sexual issues. Such sexual division is a major (geo)political limit to the Europeanisation of LGBTI rights, not only because of the opposition of some European leaders but also because of the pitfall of the Western moralistic discourse.

However, my findings contested my third hypothesis. While LGBTI rights were discursively and temporally intertwined with the rule of law crisis in Poland, the EU's response to *LGBTI-free zones* did not use the same sanctioning instruments. Article 7 was not considered, and infringement proceedings were closed for LGBTI rights violations before reaching Court. Moreover, the conditionality mechanism introduced to tackle *LGBTI-free zones* does not fall under the rule of law conditionality regulation.

Throughout my case study on *LGBTI-free zones*, I have observed the extent to which LGBTI rights are (being) Europeanised. This can be seen in the way LGBTI civil society take over European politics to find allies and acquire political resources. How did the EU address LGBTI-free zones? The main response would be the introduction of a mechanism of conditionality on

the Polish programmes of European structural funds, summarised by the *No EU values, No EU Funds* slogan.

To extend my research a comparative approach with the Hungarian case could have been used to explore other tools that the EU has to ensure the Europeanisation of LGBTI rights. Indeed, the European Commission is currently taking Hungary to the Court of Justice, with the support of 15 Member States and the European Parliament. In this case, the Commission has asked the Court not only to rule on the non-compliance of the Hungarian anti-LGBTI law (which prohibits the dissemination of LGBT content to children) with the principle of free movement of goods, but it has also strategically requested the Court to rule on Article 2 TEU. The Court's ruling could be decisive for the protection of EU values, including the principle of non-discrimination if the non-compliance with Article 2 is upheld.

At the end of the day, the situation of LGBTI rights in the continent will depend on the shaping of the future of the EU. Among the European actors whom I interviewed, some pushed for an active top-down Europeanisation of LGBTI rights, hoped for a “Human Rights Union”, declared the EU an *LGBTIQ-freedom zone* or suggested a Treaty change; while others relied on a more passive Europeanisation of LGBTI rights, relying on the hope that mentalities would change over time.

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Appendices

1 – Interview Transcripts

<i>Date</i>	<i>Interviewee</i>	<i>Position</i>	<i>Institution</i>
30/11/2022	Victor Belaud	Accredited Parliamentary Assistant of Pierre Karleskind	European Parliament
06/12/2022	Pierre Karleskind	MEP (France, Renew) Vice-President of the LGBTI intergroup	European Parliament
14/12/2022	Miguel Chambel	Secretary-General of the LGBTI intergroup	European Parliament
03/01/2023	Maria Galewska	Programme Manager at DG Regio (Poland Unit)	European Commission
23/02/2023	Jakub Gawron	Polish LGBTIQ activist Co-founder Atlas of Hate	Atlas of Hate
24/02/2023	Andrew Boff	Member of the Congress of Local and Regional Authorities (UK, ECR)	Council of Europe

a - Victor Belaud

Parliamentary Assistant of MEP Pierre Karleskind, in charge of LGBTI intergroup

Date: 30 November 2022, 4pm

Place: European Parliament, Brussels

Language: French

Duration: 44min

Vincent Machado (V.M.) : Je m'intéresse plus particulièrement au rôle du parlement car j'essaie de prendre pour point de départ la résolution du PE de mars 2021, faisant suite aux proclamations de zones anti-LGBT en Pologne. Je voulais en savoir plus sur son élaboration, les discussions ; s'il y avait eu des désaccords, des dissensus — parce que ce qu'il en ressort c'est plutôt un consensus presque évident, avec une résolution qui a été votée de la gauche à la droite, le PPE. C'est pour cela que je m'intéresse d'abord au côté Parlement, et j'ai découvert que Pierre Karleskind était Vice-Président de l'intergroupe LGBT et que c'était surtout cet intergroupe qui avait soutenu cette motion pour une résolution.

Victor Belaud (V.B.) : Ok, ça va. Hmm...Alors, petit historique...

V.M. : Est-ce que d'abord, tu peux parler de ton rôle au sein de l'équipe de Pierre ?

V.B. : Je suis collaborateur de Pierre Karleskind, je suis pas du tout spécialisé sur les questions LGBT à la base, Pierre non plus. Mais un intérêt pour la question... et au final mon rôle a été pas mal redéfini dans le bureau puisque j'ai d'abord été embauché pour être assistant de la commission marché intérieur, parce qu'il était vice-président de cette commission, et suite au Brexit il a dû changer de commission, donc j'ai dû changer de rôle et me trouver un rôle dans cette équipe. Et l'engagement sur les questions LGBT me plaisait, on avait réussi à faire quelque chose d'intéressant en juillet...août 2020, août Covid, donc août 2020 oui, on avait fait quelque chose qui avait eu pas mal d'écho médiatique et dans le Parlement, il y avait eu une sorte d'arrestation de masse de militants LGBT en Pologne, le 4 ou 5 août. C'était au cœur de l'été, personne ne faisait rien. Mais moi j'étais là j'avais fini mes vacances, Pierre également. Alors on avait lancé une question écrite signée par 130 députés, qui avait eu un grand succès. Pas mal de nos collègues français, aussi d'autres partis et qui avait eu un bel écho médiatique, ça nous avait bien plu. Il y avait eu une réponse de la Commission. Du coup on s'était dit avec Pierre

qu'on allait continuer sur le sujet et c'est pour ça que je fais de plus en plus de droits LGBT dans le bureau, d'État de droit aussi en général. On a aussi la commission du contrôle budgétaire, qui est une commission assez barbare et ennuyeuse mais qui a une compétence exclusive sur la conditionnalité des fonds européens et donc on a utilisé cette commission — ce qu'on t'expliquera un peu plus tard, pour ce qu'on a fait notamment en Pologne vis-à-vis de la suspension des fonds vers lesdites zones. Voilà c'est ça ce que je fais pour lui.

V.M. : D'accord, très bien. Est-ce que tu peux parler plus précisément de l'intergroupe de LGBTIQ, ce qu'il fait, sa composition, ses mission ?

V.B. : C'est l'intergroupe le plus nombreux et le plus puissant du Parlement Européen. Les intergroupes y en a...je sais plus exactement mais il y a une liste officielle du nombre décidé en début de mandat par une décision de la conférence des présidents et ensuite chaque député peut être membre d'un nombre illimité d'intergroupes. Il y a 150-160 membres environ. Il y a un staff, ce qui n'est pas usuel. Il y a seulement quelques intergroupes qui embauchent une personne à temps plein, là c'est le cas. Il s'appelle Miguel Chambel, il est secrétaire de l'intergroupe et il y a un VP par parti politique qui en est membre. Donc, l'extrême gauche, les verts, les socialistes, Renew, le PPE et un non-inscrit de 5 étoiles. L'intergroupe fait plein de choses: il fait de la veille en Europe parce qu'il est en contact permanent avec les asso locales dans les pays ; il fait du travail législatif sur tous les textes qui passent en plénière, il y a un travail de veille de Miguel en l'occurrence pour s'assurer qu'il y a aucun texte qui passe avec un wording négatif sur les sujets LGBT et que partout où il pourrait y en avoir un, c'est mis en amont et amendé, surtout par nous (l'intergroupe) ; il y a du travail d'influence, notamment par ce genre d'actions symboliques dont on va parler, comme la résolution LGBTIQ freedom zone. On avait fait un happening... tu avais peut-être vu la photo passer?

V.M. : Oui, avec les couleurs du drapeau LGBT

V.B. : Avec l'intergroupe ça avait été lancé pour sensibiliser la Présidente de la Commission a la veille de son premier discours sur l'état de l'union sur la situation des droits LGBT en Pologne. Et c'est au lendemain de cette action avec pas mal d'influence de l'intergroupe qu'elle avait annoncée quelques « lois » sur les sujets LGBT et une condamnation sans équivoque des

zones sans LGBT en Europe, c'était la première fois que la Commission en parlait, c'était cette fois. Voilà, travail législatif, travail d'influence, travail de veille, en gros.

V.M. : Ok ! Et vous travaillez comment au sein de l'intergroupe ? À quelle fréquence est-ce que vous vous réunissez ?

V.B. : Il y a deux à trois réunions par an, où les six députés se rassemblent, les 6 co-présidents se rassemblent, décident d'un agenda, des priorités dans les mois qui viennent mais c'est surtout...comme on ne peut pas planifier les événements politiques sur 6 mois, plein de fois c'est du « ici faut qu'on envoie une lettre, ici faut qu'on fasse des amendements », Miguel nous envoie ça à nous le staff et très vite on check avec les députés, on valide et ça fonctionne beaucoup comme ça. Des grandes lignes directrices tous les 4/6 mois et sinon du travail politique normal, voilà.

V.M. : Ok... Heu...Particulièrement sur le sujet qui nous intéresse et ce qui a déclenché un peu la résolution, heu...comment diriez-vous que la déclaration de villes polonaises comme LGBTIQ-free zone, donc sans idéologie LGBT a été reçue au sein des institutions européennes ? Si jamais tu as un aperçu global là-dessus, et sinon plus particulièrement au sein d'un Parlement ?

V.B. : Si je ne m'abuse, la première réaction c'est celle du Parlement, un tout petit peu après l'élection de 2019, un débat est en novembre 2019 avec une résolution qui condamne fermement la hausse des actes homophobes, notamment de 'homophobie d'état en Pologne, l'établissement de ces zones. Voilà ça a pas beaucoup d'écho médiatique mais ça commence là. Malgré cela, y a pas d'arrêt de la chose et les résolutions continuent à s'étendre et même courant 2021 à des régions hongroises qui commencent à s'y mettre. Et...du point de vue de la commission, hormis une condamnation lors de ce débat, pas grand chose et du point de vue du Parlement, pas grand chose...Parce qu'on ne sait pas quoi faire en fait. C'est pas des résolutions contraignantes, ça va pas à l'encontre d'un règlement ou d'une directive européenne, cela va l'encontre peut être des valeurs de l'UE...

V.M. : De la Charte ?

V.B. : Même de la Charte, mais c'est pas du...du...

V.M. : Du hard law ?

V.B. : Du hard law... et c'est pas une question transfrontalière, on ne sait pas comment attaquer ça. C'est là que vient l'idée de répondre — mais Pierre te l'expliquera encore mieux que moi — sur le plan symbolique, comme ce sont des résolutions symboliques, on s'est dit qu'on allait répondre sur le plan symbolique. C'est là qu'on a eu l'idée avec Pierre de lancer cette réponse symbolique... au début on voulait l'appeler « LGBTIQ welcome zone », la résolution qui déclare l'UE comme LGBTIQ welcome zone, et qui vient à contre-courant de ce que font les régions polonaises. Et c'est... le processus c'est, on le propose à un groupe informel au sein de Renew Europe qui s'appelle « Renew for Equality » qui sont tous les députés LGBTIQ-friendly de Renew, ou tous ceux qui veulent s'engager sur la cause. On leur propose la chose, mais on discute du mot parce que certaines délégations avaient peur que LGBTIQ welcome zone, ça veuille dire qu'on veut accueillir tous les réfugiés LGBT, donc on a retravaillé le mot. Au final, « LGBTIQ freedom zone », on est tombés dessus parce que ça reprend bien le « LGBTIQ free zone » et freedom correspond bien à ce que défend Renew Europe, un groupe libéral dans le Parlement. On s'est dit que c'était très bien, ça collait au truc. Pierre n'était pas Président de l'intergroupe LGBT à l'époque, mais on le propose à notre ancienne VP de l'intergroupe qui était Liesje Schreinemacher, ancienne députée VVD des pays-Bas, maintenant Ministre, qui le pousse au sein de l'intergroupe LGBT et ensuite commence toute une longue période de lobbyisme avec pierre, pour convaincre nos groupes respectifs de convaincre leur Président de groupe de mettre ça à l'agenda de la plénière avec la résolution. C'est tout un processus que Pierre t'expliquera mieux que moi. Je peux t'envoyer un podcast qu'il a fait où il explique tout bien le processus, je note bien tout ce que je dois t'envoyer.

V.M. : Oui avec plaisir, merci beaucoup.

V.B. : Et donc voilà. Je pense qu'on rentrera plus dans les détails après mais c'est adopté, beaucoup d'écho médiatique, ça marche très bien, une bonne réponse de la Commission et en parallèle il y a un travail qui a été fait pas initialement lié à ces choses, c'est un règlement sombre qui réglemente les fonds européens, ça s'appelle RPDC. Au tout début du mandat, il a été voté, et une bataille du Parlement ça a été d'ajouter à ce règlement une clause suspensive... une condition pour l'octroi des fonds qui est « les Etats membres doivent respecter dans la préparation et l'exécution et l'évaluation des fonds européens, la Charte des droits

fondamentaux de l'UE ». Ca passe, sans réaction du côté polonais et hongrois qui n'ont pas du réaliser sur le moment ce que ça impliquerait. Et quand on voit ça avec Pierre, donc c'était pas la commission du contrôle budgétaire mais la commission REGI, des fonds régionaux mais on s'en rend compte`. Donc on va à la rencontre de tous les DG REGIO et EMPL, ceux qui sont en charge des fonds européens, notamment dans les régions polonaises. et on leur demande: avez-vous bien conscience de l'existence de cette clause? Et allez-vous voir les régions polonaises et leur dire qu'elles ne pourront pas toucher ces fonds? Et...le point culminant de l'action européenne sur les zones sans idéologie LGBT, c'est en juillet...6 mois après la résolution, juillet 2021, quand la commission européenne envoie une lettre à toutes les régions les informant que tant que les régions ne seront pas retirées, les fonds ne parviendraient pas. Là, le gouvernement polonais commence à avoir peur, il envoie une lettre à tous les gouverneurs de région, qui font tous partie du même parti pour leur dire « nous vous invitons à bien étudier les lois et résolutions en place pour qu'à la fin on reçoive bien les fonds ». Et c'est ça qui enclenche processus de retrait en chaîne de plusieurs résolutions de villes polonaises, de 4 régions parmi les 5. Donc c'est là le switching point de l'action de l'UE. Le point culminant c'est la suspension des fonds — ça représente 10 Mds! — et c'est toujours pas débloqué pour certaines régions et... c'est ça qui a fait qu'il y a eu un recul sur ces zones.

V.M. : Ok ok... Donc initialement, c'est plutôt une initiative portée par le groupe informel Renew Equality, et ensuite est-ce que vous passez par l'intergroupe?

V.B. : On passe par l'intergroupe surtout pour le plan de comm'. Parce que l'intergroupe est une machine de guerre qui a plein de relais sur le terrain, de contacts médiatiques, et qui est donc très utile pour faire du bruit quand il y en a besoin. Donc on prévoit avec eux tout un plan de communication : on avait fait le happening coloré devant le Parlement européen, on avait fait habiller le Manneken-Pis aux couleurs de la Pride le jour du vote, on avait fait une tribune publiée dans Euractiv, on avait lancé une campagne partout en Europe pour que les gens prennent une photo dans leurs villes avec un panneau « ici, c'est une LGBT freedom zone ». Ça avait très très bien marché sur Twitter, notamment en France et en Allemagne ça avait très bien marché. On avait utilisé l'intergroupe là-dessus. Et l'intergroupe a eu un rôle sur le drafting de la résolution, donc on a — ils ont — toujours fait ça en coopération avec nous malgré le fait qu'à l'époque on ne faisait pas partie du bureau, étant donné qu'on était les initiateurs on a toujours été intégrés et on a fait le draft, la résolution en elle-même, ensuite ça a été négocié et ensuite tout le service après vente a été fait par l'intergroupe LGBT, par exemple l'intergroupe

avait envoyé des copies de la résolution aux activistes locales, en hongrois et en polonais pour les distribuer au niveau local, lors des Prides sur place et pour que ce soit accessibles à tous les citoyens. Ce genre de choses a été fait par l'intergroupe.

V.M. : Ok, très bien ! Et est-ce qu'au moment de discuter avec les autres groupes, vous avez rapidement eu un schéma entre qui est de votre côté, qui ne l'est pas. Est-ce qu'il y avait une froideur/une réticence...notamment à droite?

V.B. : Non.. alors on a vite compris qu'il n'y avait pas de problème du côté des partis de gauche. Côté PPE, on avait contacté Roza Thun, qui est une députée très influente, de Pologne, qui était au PPE à l'époque, elle est venue chez nous entre-temps. Et c'est elle que Pierre a appelé pour lui présenter l'idée. Elle a trouvé l'idée excellente et l'a défendu auprès de son groupe, et c'est ça qui a fait que son groupe a dit ok à la conférence des présidents pour le mettre à l'agenda, il y avait l'actuelle Présidente du Parlement, Roberta Metsola, c'est elle qui a défendu le truc en plénière, et elle c'est une alliée incontestable de la cause LGBT. Et elle était Vice-Présidente à l'époque donc elle pesait dans son groupe, donc toute une partie d'alliés au sein du groupe PPE, ça ne veut pas dire que la majorité soit nos alliés, mais c'était pas quelque chose de...de contraignant, très controversé, c'est passé largement. Ce n'est pas le cas chez nos chers LR, qui se sont abstenus si je ne me...Bellamy, et il y a une frange du PPE, de plus en plus, notamment les LR qui sont plus frileux sur les sujets LGBT... enfin c'était flou. Mais ça n'a pas eu la majorité (chez PPE). L'ID a joué un rôle un peu bizarre parce que si tu regardes la résolution, il devait y avoir plein de considérants et ensuite un seul article, mais là il y a « L'UE déclare... » et en fait c'est deux articles parce que chez l'ID ils ont décidé d'utiliser la résolution pour... la semaine du vote il y avait eu un meurtre homophobe dans un parc en Belgique, par..un Arabe, donc ils ont fait un amendement en plénière à l'article disant qu'ils condamnaient dans les termes les plus fermes ce meurtre. Ils n'avaient pas participé aux négociations, ça sort de nulle part. La plupart des groupes ne peuvent pas voter contre ça parce qu'on peut pas voter contre un tel amendement. Et donc ça a été adopté, ça déstructure totalement...bref, la contribution de l'extrême droite s'est résumée à ça, a voulu s'appropriier et instrumentaliser le truc de façon ignoble, et ça se voit sur la résolution finale, parce que ça passe à deux articles. Donc pas trop d'opposition globale, c'était assez consensuel les négociations. Il y a eu quelques points chauds, si je me rappelle bien...il y avait des amendements notamment de LFI qui venaient saluer le lancement du #MeToo gay en France et condamnaient le comportement inacceptable des membres du PCF vis-à-vis, je sais pas si tu te rappelles...

V.M. : Oui, je crois...

V.B. : Oui, et la personne avait... je sais pas si elle avait déjà commis son suicide ou pas. Ça aussi c'était un truc sensible parce que c'était la FI qui voulait se faire le PCF. Bref, il y avait ce genre de débats mais rien de très fondamental, c'était très...consensuel au final. Quelques paragraphes sur la police qui ont fait un peu plus polémique..notamment de la LFI qui condamnait l'attitude homophobe de certains policiers, donc ça a refait débat mais sur l'essentiel de la résolution y avait l'extrême majorité. Je me rappelle plus s'il y avait des amendements, faut que je regarde. Mais voilà, au global très consensuel.

V.M. : C'est intéressant que tu mentionnes le fait que vous ayez discuté avec une MEP polonaise justement, est-ce que vous aviez d'autres personnes que vous avez contactées sur cette résolution en particulier parce qu'ils étaient polonais ?

V.B. : Ouais ouais, les délégations polonaises étaient clés, il fallait aller les chercher pour qu'elles convainquent leur groupe, les Hongrois aussi, parce qu'ils avaient la même chose qui était en train de se passer... La loi anti-LGBT hongrois n'était pas encore passée mais ils voyaient ce qui était en train de venir. De toute façon au Parlement européen, on ne peut rien faire en étant français seuls donc on devait convaincre non seulement d'autres groupes, mais aussi d'autres nationalités. Surtout que ça venait de Pologne. Je pourrais t'envoyer le mapping qu'on avait fait pour les contacter et leur demander de convaincre leur Président de groupe... donc oui on avait contacté pas mal de gens, Roza Thun c'était la principale parce que la vraie question c'était le PPE et c'était elle la personne clé au PPE à contacter.

V.M. : Très bien. Heu....Ah oui, est-ce qu'en parallèle vous avez envisagé d'autres biais — enfin, on en a parlé un petit peu de tout ce qui a été fait à côté de seulement cette résolution symbolique ?

V.B. : Comme je disais, il y a pas vraiment de moyen légal d'attaquer le truc mais on voulait faire quelque chose, c'est ça le meilleur moyen qu'on a trouvé. Il y avait des réticences au début notamment chez les socialistes français qui se disaient : « mais c'est quoi cette résolution symbolique, les gens vont nous dire mais qu'est-ce que ça change? » Il y avait cette question de savoir est-ce que ça va être un coup d'épée dans l'eau. Et en fait pas du tout, ça a été une

résolution qui a amené l'œil des médias sur la situation, ça s'est bien combiné en France avec la visite de Clément Beaune le lundi de la plénière en Pologne où il s'est vu refusé l'entrée dans une zone anti-LGBT, du coup ça attiré l'œil, du coup les gens se sont demandés « mais que fait l'Europe? » Et c'était la semaine où on adoptait la résolution donc c'était très bien et toutes les matinales de France ont parlé du truc, heu... les Français pour la première fois ont entendu parler de zones sans LGBT en Europe, ils se sont dits « mais qu'est-ce que c'est que ça? » Et après ça s'est bien ressenti au local, mon député est bien implanté localement, il passe beaucoup de temps en Bretagne et, qui, dès qu'il va sur les marchés où qu'il rencontre des citoyens notamment intéressés par la question LGBT, ils demandent « pourquoi on donne de l'argent aux homophobes polonais pour faire respecter nos valeurs ». Et c'était un excellent moyen de mettre la lumière sur ce sujet, d'intéresser nos citoyens sur le sujet, et de faire augmenter la pression finale sur la Commission, parce que c'est elle qui avait les clés en main pour agir et elle l'a fait, elle l'a fait très bien. C'est un des... on avait fait en novembre 2021, une mission en Pologne/en Hongrie avec Pierre et Valérie Hayer, tous les deux avec son équipe et moi. On avait fait tout un tour des personnes affectées par les attaques sur l'Etat de droit et notamment les journaux. On a eu une discussion avec un journaliste et c'était vraiment un des seuls points positifs qu'il disait, il témoignait du fait que l'Europe était très faible, ne réagissait pas à la hauteur de ce qu'il se passait sur l'Etat de droit, sauf sur les zones LGBT où là, et c'est le journaliste qui l'a dit et ça a été fort — on s'était dit wow on voit l'impact de ce qu'on fait —, sauf sur les LGBT où là la Commission a été forte, a utilisé le règlement au bon moment, au bon endroit et ça a provoqué du changement. Ça prouvait que cette résolution symbolique avait finalement eun pas mal d'impact concret par l'intérêt médiatique qu'elle avait suscité.

V.M. : Donc, le suivi, tu l'as peut être un peu dit, mais ça a permis a la Commission derrière de rebondir et de jouer avec la suspension de fonds, aux villes et régions qui avaient signé la Charte et se déclaraient zones anti-LGBT et là-dessus je pense que c'est bon sur le suivi global...?

V.B. : Ça a aussi provoqué une adoption en chaîne par des collectivités locales de résolution se déclarant LGBT-freedom zone: des villes, des régions, pas seulement en Pologne, mais aussi en Europe. Il y a eu Amsterdam, il y a eu Lisbonne mais aussi la Catalogne, il y a eu plein de villes en France ; on a la liste que je pourrais t'envoyer. Est-ce que j'en ai d'autres? Sûrement qu'il y en a d'autres partout en Europe, et ça a aussi amené — Strasbourg, Bruxelles, Luxembourg les trois capitales européennes se sont déclarées LGBTIQ freedom zone — à une prise de conscience au niveau des collectivités locales notamment au niveau des partenariats,

les jumelages. Il y a plein de villes qui ont suspendu leur jumelage vis-à-vis des zones sans LGBT, et...ça a aussi provoqué une pression au niveau locale dans la coopération décentralisée. La ville de Nogent sur Marne avait fait ça. Elle avait vu notre résolution, elle s'était entretenue, l'Adjointe, avec Pierre au téléphone et ils avaient suspendu le jumelage avec la ville et avaient adopté une résolution similaire au niveau local. Donc pas mal d'impact au niveau local, pas qu'en Pologne, mais aussi dans les collectivités, notamment françaises.

V.M. : Ok...Alors depuis cette résolution, en Pologne donc il y a eu le recul de la plupart des collectivités polonaises qui s'étaient déclarées anti-LGBT, mais il y a quand même un certain déclin dans la garantie des droits LGBT en Pologne, en Hongrie également du coup, depuis avec la propagande dans les manuels scolaires etc. Est-ce que là-dessus le Parlement s'est exprimé, est-ce qu'au sein de l'intergroupe il y a des discussions ?

V.B. : Alors...la plus grosse réaction qu'a eu l'UE, ce n'est pas sur la Pologne — donc là c'était sur les zones sans LGBT en mars 2021 — mais en juillet 2021, il y a eu loi anti-LGBT hongroise, et c'est là qu'il y a eu la plus grosse réaction de toutes les institutions coordonnées en même temps. Cette loi est adoptée — pas seulement discutée, le Parlement...on était en pleine zone creuse, la plénière était dans 3 semaines, donc on a annoncé qu'on allait mettre le sujet à l'agenda plénière et adopter une résolution, donc nous on est arrivés bien après — il y a eu une réaction salubre de la Commission européenne et du Conseil, et je vais t'expliquer comment ; c'est la réaction la plus forte qu'on ait vu sur des sujets LGBT en Europe. C'était la Présidence portugaise à l'époque, on a eu la déclaration conjointe de 17 ou 18 ministres de l'UE, des affaires étrangères, pour condamner clairement et rappeler les valeurs de l'UE — c'était la première fois qu'on parlait de ça au Conseil, et le Conseil lui-même a adopté la même déclaration — pas tous, seulement 21 des 27 qui ont adopté ça et ils ont donc fait pression sur la Commission, pour agir et agir comment ? Cette fois c'était simple parce qu'on avait des outils juridiques et légaux et c'était une loi qui notamment enfreignait la directive sur les médias audiovisuels et les principes de libre circulation des produits — notamment les livres — et la provision de services dans l'UE ; ce qu'il s'est passé c'est que la Commission européenne, mais c'était pas la Commissaire aux valeurs...C'était le Commissaire au marché intérieur Thierry Breton et celui à la Justice, Didier Reynders, qui ont déclenché deux procédures d'infraction contre cette loi, sur les principes du marché intérieur. Donc pas sur la Charte des droits fondamentaux mais sur le coeur des compétences de l'union européenne. Heu...le principe des procédures d'infraction c'est trois étapes : d'abord, on déclenche la procédure, un retour de l'Etat

membre, puis une lettre pour contester le retour de l'Etat membre, un autre retour de l'Etat membre et si la Commission considère que c'est pas assez, elle envoie le cas devant la CJUE. Ce qu'elle a fait un an plus tard en juillet 2022. Ils ont envoyé les deux procédures d'infraction devant la CJUE, contre cette loi. C'est la 1ere fois qu'il y a un cas porté devant la CJUE qui concerne les sujets LGBT et la CJUE va rendre son arrêt bientôt et pourrait imposer une amende et à la Hongrie de retirer au moins une partie de la loi, celle qui interdit les produits LGBT. Et donc c'est ça le point culminant de l'action européenne, c'était la loi hongroise anti-LGBT. On avait jamais vu les 3 institutions ensemble prendre des déclarations assez fortes. Il y avait même eu le premier ministre néerlandais qui avait appelé à la sortie de la Hongrie de l'UE. Maintenant, dans le futur, je crois qu'on... l'impression qu'on a avec Pierre c'est qu'on a atteint le pic du momentum sur les sujets LGBT, aprce que sur la Pologne on a fait ce qu'on avait à faire, on peut pas faire grand chose d'autre. Sur la Hongrie, on attend la décision de la CJUE, mais voilà. Et...

V.M. : Actuellement comme dossier il y a peut-être la reconnaissance des familles homoparentales?

V.B. : Voilà, maintenant ce qu'il y a c'est au niveau européen, c'est pas tant une réponse à ce qu'il se passe dans certains états de l'UE, mais il y a l'intégration des crimes et des discours de haine dans la liste des crimes européens proposés par la Commission l'an dernier mais bloqué au Conseil parce qu'il faut l'unanimité. Et la semaine prochaine, la présentation du paquet égalité par la Commission avec notamment la libre-circulation des familles homoparentales, l'intergroupe aura un rôle à jouer avec l'organisation d'évènements, la communication là-dessus, va participer avec des amendements sur les textes législatifs, sachant que ça devient un petit sujet en France, mais la Manif pour Tous se réveille, on a eu un débat la semaine dernière en plénière avec discours unanime de tous les groupes, sauf l'extrême droite, même le PPE parlait bien. Et...Bellamy a la fin qui arrive, qui se réveille en disant que c'est une tentative de la Commission européenne d'imposer la GPA dans tous els pays. Donc je pense que ce qui est à venir dans les prochaines semaines sera assez intéressant parce que les milieux conservateurs catholiques vont se réveiller et faire de ce sujet un truc un peu plus politique et ça s'est passé pour le moment un peu en dessous les radars. Pierre n'aura pas un rôle là-dessus parce qu'il siège ni en JURI ni en LIBE qui sont les deux commissions saisies au fond, on participera et on continuera les amendements via l'intergroupe. Certains députés de l'intergroupe LGBT qui seront rapporteurs sur ce sujet, on suivra ça mais on aura pas un rôle de premier plan.

V.M. : Ok, très bien. Hmm... Je réfléchis à une potentielle autre question...

V.B. : Ces deux lois dont on vient de parler, ce sont deux lois qui ont été annoncées par Von der Leyen lors de son premier discours sur l'Etat de l'Union en 2020, hmm... après 1 mois de pression de l'intergroupe, le happening, la photo que tu as vue et c'est la seule fois où dans un discours sur l'Etat de l'union qu'elle a parlé du sujet LGBT et...

V.M. : Il y a aussi une stratégie pour les personnes LGBT qui a été publiée

V.B. : Exact, elle l'a annoncé à ce moment-là, cette stratégie...en fait le gros problème de ces questions à la Commission c'est que c'est porté par une Commissaire européenne très faible, Helena Dalli... On avait beaucoup d'espoir en elle, mais en fait elle n'a aucun pouvoir, elle est très isolée au sein de la Commission parce qu'elle a fait une bêtise monumentale qui était de publier des lignes directrices sur la communication inclusive dans la Commission européenne, quelque chose qui ne devait pas devenir public et qui a été pris en épingle par un VP de la Commission, Margaritis Schinas, le Grec, donc de droite, pas fasciste mais conservateur, qui a vu des choses comme « ne souhaitez pas joyeux Noël mais bonnes vacances et qui en fait toute une esclandre, c'est remonté très haut et en plénière on a eu un débat là-dessus, et maintenant par exemple Helena Dalli doit faire relire tous ses discours par le cabinet de la Présidente donc elle en est à ce point de faiblesse. Donc la stratégie LGBTIQ elle n'est plus portée, l'unité qui est chargée de la mettre en œuvre c'est une personne et il devrait partir parce qu'il se fait chier. Donc, c'est là la limite de l'ambition européennes 'est qu'elle a donné le truc à une commissaire européenne et elle n'a pas mis les moyens pour faire quelque chose... après elle le fait dans le cadre de ses compétences, ce n'est pas le cœur des compétences de l'UE, mais voilà, pour moi le plus gros problème à la Commission c'est que la Commissaire qui porte ces problèmes n'est pas forte.

V.M. : Ok ! Intéressant aussi d'avoir la cartographie des acteurs, et les rapports de force qu'il peut (ou pas) y avoir. Alors c'est bon de mon côté. Peut-être as-tu des recommandations de personnes à interroger ?

V.B. : Alors, il faudrait que tu rencontres Miguel Chambel, le coordinateur de l'intergroupe. Aussi, je pense que Cyrus Engerer, qui avait négocié la résolution pour les socialistes, son

équipe était très impliquée et lui aussi, il pourrait être intéressant à interviewer. Sur l'aspect Hongrie, je peux te passer le contact du cabinet de Reynders qui aura sûrement beaucoup de choses à dire. Les autres co-présidents/VP de l'intergroupe seront très intéressants à interroger et Miguel saura te rediriger puisque c'est lui l'expert.

V.M. : Ça marche ! Merci beaucoup à toi.

b - Pierre Karleskind

Member of European Parliament (France, Renew) – Vice-President of the LGBTI intergroup

Date: 6 December 2022, 3pm

Place: European Parliament, Brussels

Language: French

Duration: 33min

+ Victor Belaud (APA) present during the interview

Vincent Machado (V.M.) : Je réalise un mémoire cette année, je suis en première année de master en Affaires européennes à la Sorbonne, et je réalise un mémoire qui pour le moment s'intitule : « Is the EU an LGBTIQ freedom zone? » qui reprend justement la résolution du mars 2021 que vous avez soutenue et préparée et faite adopter ; et qui a eu une certaine résonance politique, médiatique derrière, et également conduit au retrait des résolutions des villes polonaises qui s'étaient déclarées « LGBTIQ-free zone ». Donc, l'objectif d'abord, c'est de partir de cette résolution, d'étudier comment à partir d'une résolution, un acte symbolique, on arrive à des conséquences politiques et aussi de questionner le rôle de l'UE, du Parlement d'abord sur des questions pour lesquelles l'UE n'a pas compétence initialement, mais sur lesquels on parvient tout de même à voir certaines avancées, et à identifier quelques leviers. Peut-être, parce qu'on a un temps assez court, commencer par parler de votre rôle au sein de l'intergroupe LGBTI qui a piloté/suivi tout au long la résolution et son adoption. Est-ce que vous aviez un engagement préalable sur les questions LGBT?

Pierre Karleskind (P.K.) : Alors...déjà pour présenter les choses dans la façon dont vous les percevez... Alors, je vais prendre un papier et un crayon. Bon la première chose effectivement, j'ai initié cette résolution, je sais pas si Victor vous en a parlé, mais qu'une des premières choses qu'on a eu à faire quand je suis arrivé, donc au mois de mai 2019, c'est l'histoire de ces régions polonaises qui se déclaraient sans LGBT, enfin c'était un peu plus compliqué que ça, le système médiatique l'a traduit comme ça mais je crois qu'il y en a aucune qui s'est explicitement déclarée « LGBTIQ-free zone », ou quasiment comme telle, en adoptant des « chartes des familles », des choses comme ça. Donc on s'est retrouvés avec ça et c'est dès l'automne 2019 qu'on s'est retrouvés avec des débats au Parlement européen sur le sujet. Et puis, au fur et à mesure de l'avancée de nos réflexions, je me souviens plus des dates exactes, mais à un moment

une collègue qui est à la tribune du Parlement européen, alors qu'on avait un débat à Bruxelles, qui dit en anglais « We should be a LGBT welcome zone »... « A zone where we welcome LGBT, EU should not be an LGBT-free zone ». Sur le moment on s'est dit qu'on allait en faire une "LGBT welcome zone", voilà. Et puis c'est au sein du groupe au sein de Renew, le groupe Renew for equality, y a pas le drapeau quelque part...?

V.M. : Il y était à l'entrée

P.K. : Ah voilà. Donc je propose à mes collègues qu'on dépose une résolution pour faire de l'UE une zone de bienvenue pour les LGBT, puis en fait sur le moment, on trouvait ça pas terrible comme wording, donc on a vite convergé sur une LGBT freedom zone, ce qui d'une part était plus en lien avec ce qu'on voulait dire et d'autre part avait le bon goût d'avoir une résonance phonétique similaire à celle des régions polonaises. Donc c'était vraiment le contre-pied de ce qu'on voulait faire. Ce qui me permet de dire que dans le côté initial de cette résolution quand je la portais, c'est d'abord une initiative personnelle, ensuite une initiative de Renew for Equality, validée au sein de ce petit groupe puis ensuite j'ai proposé au groupe Renew qui l'a ensuite porté auprès des autres groupes, avec un fort travail de coordination de l'intergroupe LGBT. Alors, en fait, à l'origine j'étais simple membre de l'intergroupe LGTBI, parce que c'était notre chef du petit groupe Renew for Equality, Sophie in't Veld qui était VP pour Renew au sein de l'intergroupe. Après en termes d'engagement personnel sur le sujet, préalable à ici, j'étais trésorier de l'association de XY qui est le nom de l'association des élèves LGBT de l'école Polytechnique, c'était entre 2001 et 2003, nous étions 3 membres : un Président, une VP et un trésorier...Ça fait bien de dire que j'étais trésorier mais j'avais un budget de 20€ haha. Oh c'était marrant parce qu'à l'époque on devait être — enfin à l'époque, les militaires n'ont pas le droit d'association, les élèves de Polytechnique sont des militaires, et donc on était probablement la seule association officielle, LGBT de militaires en France. C'était en plus dans une institution militaire, enfin pas tout à fait militaire mais dépendant du Ministère de la Défense... On avait un commandant qui avait 12 enfants, donc on l'attendait pas très...mais finalement ça a été le plus aidant sur le sujet, c'était assez drôle... quand des plus jeunes étaient plus difficiles.

V.M. : Hmm... Et quand...

P.K. : Alors c'était en 2001-2003, d'ailleurs on n'était pas très longtemps après la création des premières associations étudiantes LGBT, enfin il y a eu une grosse vague dans les années 1990 puis les années 2000 au moment du PACS, donc on était vraiment la deuxième ou troisième promotion à être dans cette vague.

V.M. : Donc...Pardon.

P.K. : Je raconte ma vie, désolé...

V.M. : Donc quand vous arrivez en 2019, vous rejoignez directement l'intergroupe et le groupe informel Renew for Equality, avec Sophie In't Veld, et comment... vous l'avez déjà un peu expliqué, mais comment vous recevez les déclarations des villes polonaises, parce que c'est assez progressif en 2019, l'adoption de chartes régionales de protection des droits de la famille etc, qui se fait un peu en domino, qu'est-ce qui vous informe le plus et y a-t-il que vous qui sentez qu'il est possible de faire quelque chose au niveau européen ? À quel moment vous dites-vous "on fait une résolution" ?

P.K. : En fait ce qu'il se passe, c'est que... j'ai évoqué le fait qu'à partir de l'automne 2019 (il se tourne vers son assistant) — je pense que ma première intervention devait être en septembre 2019 ? — Heu...c'était ma première intervention dans l'hémicycle d'ailleurs. Et en fait on allait de débats en débats, on a peut-être même fait des résolutions là-dessus...

Victor Belaud (V.B.) : il y a eu une résolution là-dessus mais c'était une résolution typique

P.K. : Assez vague, voilà. En fait, au PE à part faire des résolutions on fait pas grand chose... (sur un ton humoristique) "coupez moi ça...". Non non, mais pour le coup on faisait des résolutions et vous le dites en fait, l'UE est un peu démunie par rapport à ce genre de sujets, mais en même temps, hmm.. il grandissait deux choses : d'abord l'aspect symbolique et ensuite l'aspect un peu plus pratique. Sur l'aspect symbolique, en fait, lors d'un débat, c'est Sophie elle-même qui tend la perche : "l'UE devrait être une LGBT welcome zone..." mais en fait on se dit pourquoi on le concrétise pas ? S'il faudrait qu'on le soit ben disons qu'on l'est ! C'est comme ça qu'on bascule et puis avec la logique de dire : au fond, ces résolutions sont purement symboliques, elles n'ont aucune portée légale, enfin presque, dans les régions où elles s'appliquent C'est-à-dire que vous ne pouvez pas vous faire mettre dehors par votre région ou

votre ville parce qu'il y a cette résolution. Mais pour autant, cela crée une ambiance de merde. Enfin, c'est une ambiance délétère, et imaginez les jeunes de 15-16 ans qui questionnent leur sexualité, on leur dit qu'ils ne sont pas normaux, donc je me dis : la violence du symbole et bien, nous y répliquons par la portée du symbole. Au fond, les citoyens polonais sont d'abord des citoyens européens, et comme vous êtes citoyens européens, vous avez le droit à la protection. Parce que l'UE, c'est peut-être pas dans ses compétences mais quand même : Charte des valeurs fondamentales, article 2, tout ceci est parfaitement interdit, dans les pays de l'UE, donc les pays ayant souscrit à l'UE doivent s'y conformer. Donc ça c'était sur la partie symbolique, on répond ainsi. En même temps, on fait grandir la pression autrement que par le symbole, parce qu'un symbole c'est bien gentil mais ça ne fait pas tout, et en particulier, on est à ce moment-là en train de négocier le budget, ce qu'on appelle "Cadre Financier Pluriannuel" sur lequel et bien on regarde les pratiques d'un certain nombre d'états-membres sur les questions d'indépendance de la justice, du respect des valeurs fondamentales, de lutte contre la corruption, et bien...le groupe auquel j'appartiens et un certain nombre d'Etats, demandent à ce qu'une conditionnalité soit mise sur l'utilisation du budget de l'UE, et grandit en même temps l'idée de faire un règlement, le règlement de conditionnalité, qui a fini par être adopté, qui donc protège le budget de l'UE contre tout manquement au respect des valeurs l'UE. Alors...c'est un peu le pendant pratique de la chose, parce qu'au-delà du symbole, comment on fait face à ces régions, enfin même ces Etats — puisque le règlement de conditionnalité s'adresse à des Etats ? Bon...moi assez rapidement je fais une analyse que ça servira à rien sur le sujet LGBT et d'ailleurs...la première saisine montre que le truc n'est toujours pas utilisé sur les sujets LGBT, et en fait ça protège le budget, ça ne protège pas les individus mais le budget de l'UE. **Alors, il faut montrer qu'une résolution discriminatoire sur le sujet LGBT viendrait mettre à mal le budget de l'UE... bon courage pour le faire, ça n'arrivera pas dans 15 ans.** Mais, ça fait tout de même grandir la pression, ça fait grandir l'idée que vous ne pouvez pas faire n'importe quoi sur les droits fondamentaux dans l'UE. Et en même temps, et ça c'est mon expérience précédente ce gestion budgétaire des fonds européens puisque j'étais vice-président de la région Bretagne aux affaires européennes et donc j'étais autorité de gestion, moi j'étais le représentant d'autorité de gestion de ces fonds puisque les régions françaises ont récupéré la gestion des fonds européens en 2014, donc moi j'ai dû me coltiner les fonds européens. Or, il y a un règlement à la con que personne ne connaît : le règlement portant dispositions communes (RPDC) et heu...là c'est quand même drôle parce qu'avec le Brexit je change de commission au Parlement, au grand dam de mon assistant Victor, puisque j'arrive en contrôle budgétaire, truc sinistre à souhait — sauf que c'est la Commission compétente sur le RPDC puisqu'en

charge du budget. En gros, c'est le règlement qui donne les conditions et les façons d'utiliser les fonds structurels européens, ces fonds c'est un tiers du budget de l'UE, et pour la Pologne c'est la moitié de l'investissement public. Voilà. Dans ce truc là, il y a un petit article, l'article 9 un truc comme ça, qui dit que toute autorité de gestion doit s'assurer pour la mise en oeuvre des fonds, du respect des valeurs énoncées dans l'art. 2 de la Charte des valeurs fondamentales de l'UE, donc là on a eu une audition sur le sujet, j'interroge la Commission européenne : mais concrètement comment ça se traduit ça sur la Pologne ? Je sais pas si vous savez mais y a des régions... et là c'est marrant parce que le truc qui n'est pas obligatoire devient finalement explicitement la preuve qu'il est impossible que les régions mettent en oeuvre les fonds structurels dans une visée non discriminatoire puisqu'elles prennent des résolutions discriminantes. Donc concrètement je leur demande ce qu'ils vont faire. Il faut le dire aux autorités polonaises ça. Donc la Commission envoie une lettre pour pointer le problème, la Commission fait l'analyse des accords de partenariats, au niveau national, et les programmes opérationnels régionaux et renvoient un certain nombre de questions parmi lesquelles : pouvez vous nous assurer que vous allez mettre en oeuvre les fonds structurels de façon non discriminatoire dans les régions qui ont adopté des résolutions discriminatoires ? Bon la Pologne n'a pas les moyens de se passer des fonds européens, parce que bon la Pologne à cette époque là c'est déjà 10% d'inflation, on est bien avant ce qu'il se passe aujourd'hui, la Hongrie pareil à l'époque. Donc le gouvernement polonais écrit aux régions pour leur dire : vous êtes bien gentils, mais non seulement vous allez passer à côté des fonds européens mais en plus vous allez faire foirer notre accord de partenariat : si vous n'êtes pas capable d'une mise en oeuvre non discriminatoire des fonds, nous on ne pourra pas avoir les fonds. Donc globalement, cela créé, pendant l'été 2021, ce retrait. Donc ça a été une action symbolique et très visible, puis une action beaucoup moins visible qui a d'ailleurs fait beaucoup moins parler parce qu'elle n'est pas flamboyante alors qu'en réalité, cette histoire de régions qui fait tomber leur déclaration — moi je l'ai toujours dit le règlement de conditionnalité a aidé mais ce n'est pas ça qui a servi mais un règlement sinistre et moins connu qui nous a permis en étant activé de révéler un vrai levier. En fait, c'est un des sujets qu'on a du mal à soupçonner, enfin bon là on était en amont de la validation des plans, mais il y a un truc qu'il ne faut jamais oublier c'est que les dépenses publiques ça s'engage et ça se paie. Donc ça fait deux étapes différentes : vous pouvez contrôler les conditions dans lesquelles vous engagez de l'argent, c'est-à-dire vous promettez de le faire, et vous pouvez aussi contrôler une seconde fois sur la façon dont vous voulez le payer et c'est ce qui va se passer dans les années qui viennent : c'est-à-dire que même si, par exemple on parle de la validation du plan de relance pour la Hongrie, même s'il est validé, ben l'argent ne sera

pas payé tant que vous n'avez pas souscrit à l'indépendance de la justice, l'état de droit etc. Donc en fait, ça montre que finalement, c'est quoi les fonctions du Parlement ? Ben c'est de faire du hard power parce qu'on vote quand même les règlements —, mais aussi du soft power pour que les règlements soient appliqués. Parce qu'on peut voter des règlements sans qu'ils soient appliqués, et c'est donc ce qu'on a fait sur ce sujet-là.

V.M. : Très bien. Peut-être d'un point de vue plus politique interne et rapports de force, sur une résolution comme celle-ci qui à la fin est votée à une grande majorité, est-ce que c'était évident que ça de rallier jusqu'au PPE...?

P.K. : Alors j'ai pas regardé comment ECR avait voté...(se tournant vers son assistant) Ils ont tous voté contre ou pas ? A l'époque on était moins politiques, on était jeunes et innocents... Bon. Alors le PPE, le PPE ils sont marrants.

Victor Belaud (V.B.) : Une étape intéressante c'est que ta résolution a été votée la semaine où ils ont exclu la Hongrie de leur groupe.

P.K. : Ah oui, je me souviens, oui oui. Parce qu'alors, il y a eu une actrice clé dans les relations avec le PPE, bon...pas de bol, ou plutôt coup de bol, elle est chez nous maintenant, c'est Roza Thun, c'est une histoire politique en elle-même : elle était quand même porte-parole des étudiants de Solidarnosc dans les années 1980 en Pologne, donc elle a accompagné la révolution polonaise, son père a du être un des premiers maires de Cracovie élu démocratiquement si je ne me trompe pas, elle vient d'une famille très engagée et ensuite c'est Donald Tusk, Donald il s'appelle ?

V.M. : Oui oui

P.K. : Donald Tusk qui vient la chercher en l'incitant à se présenter aux européennes. Puis elle, (se tournant vers son assistant) quand est-ce que j'étais allé la voir ? Pourquoi j'étais allé la voir déjà ?

V.B. : parce qu'elle était polonaise ?

P.K. : Je crois que j'avais vu un vote, et au sein du PPE, j'ai vu qu'elle avait voté en faveur d'un truc sur les sujets LGBT. En voyant ça, je m'étais dit, tiens je vais l'appeler. Donc je l'appelle et...je lui dis : écoute Roza, je voudrais faire ça mais je voudrais ton avis, pour deux choses : déjà j'aimerais avoir le PPE à bord sinon ça va faire une résolution pouvant potentiellement rejetée ou adoptée pas largement, et je crains une chose c'est d'imposer nos valeurs de pays occidentaux à des gens qui, en Pologne, ont des normes différentes. Et elle me répond : tu sais en Pologne, si tu regardes les sondages d'opinion, les gens ne sont pas homophobes, ils en ont globalement rien à faire. Finalement comme partout, c'est surtout la droite de la droite qui en fait un outil politique et qui brandit des boucs émissaires, voilà, ce qu'Orban fait très bien sur tous les sujets — c'est assez édifiant d'ailleurs de voir comment Orban érige tout ce qu'il peut en boucs émissaires : les LGBT, les musulmans,... —Et donc j'appelle Roza Thun qui me dit aussi "Pierre je sais pas pourquoi mais vous nous avez envoyé les plus réactionnaires chez LR, je sais pas ce qu'il fait chez nous François Xavier Bellamy" Je dis ben oui, ça c'est sûr que vous avez le meilleur...Donc ça m'a bien fait rire, et elle me dit écoute je vais voir le Président de mon groupe et je vais lui dire c'est pas compliqué je reste pas dans ton groupe s'il y a encore les Hongrois du Fidesz, c'est incroyable d'avoir des gens comme ça. Bon, effectivement il se trouve que cette semaine-là les Hongrois ont été virés, je suis pas sûr que ce soit grâce à Roza Thun, mais voilà. Elle m'a aussi dit qu'elle aborderait mon sujet pour le mettre à l'ordre du jour au PPE. Donc c'est comme ça que le PPE est rentré dedans, il y a eu, il est vrai, au PPE un changement, ils ont du voté pour à deux tiers contre un tiers

V.B. : "très largement ils l'ont voté".

P.K. : Ils l'ont voté très largement même, même si certains...Qu'est-ce qu'il a voté Bellamy tiens ? Abstention peut-être. Heu...bon deux tiers un tiers sûrement, il serait mieux chez ECR lui. Mais ils (le PPE) ont même lancé une campagne contre l'homophobie cette année. En fait au PPE ils ont compris que c'était pas là-dessus...enfin s'ils voulaient se distinguer d'ECR, parce que le sujet va être là. Parce que je fais le constat que la cristallisation que nous vivons en France, de la gauche autour de LFI, ben une grande partie de la droite est en train de le vivre au niveau européen donc le PPE s'il veut se distinguer, il va falloir qu'il trouve quelques éléments pour ratisser un peu plus large. Soit ils se font étouffer par une droite réactionnaire, soit ils décident de s'élargir donc voilà comment les choses se sont faites. Cette résolution a aussi participé de...à cette ouverture du PPE sur les sujets sociétaux.

V.M. : Et à gauche ?

P.K. : Bah à gauche, non. Enfin, évidemment on a des spécialistes de la guérilla parlementaire, on nous a introduit avant le vote des amendements... je sais plus il y en a un qui disait que les flics étaient tous homophobes, non un truc comme ça ?

V.B. : un truc sur les flics, et un truc perso sur le PCF...

P.K. : Ah oui, un truc sur des évènements particuliers, c'est des spécialistes, ils font ça à chaque fois ils mettent des amendements à la con, bon, la guérilla c'est moche quoi. "Tu votes pour ou tu votes contre ?" "Ah vous avez voté contre, vous êtes pour la guerre" Voilà... sinon non à gauche il y a pas eu de problème. Quoique dans mon groupe il y a eu un vote contre, non ?

V.B. : une abstention de... Nargus

P.K. : il s'est trompé de bouton ou il est homophobe ?

V.B. : non je crois qu'il est vraiment homophobe....Les socialistes roumains aussi ont changé leur vote pour voter contre)

P.K. : Les Roumains ils ont voté contre ?

V.B. : il y a eu un scandale en Roumanie, donc ils ont du changer leur vote

P.K. : Les Roumains ils sont un peu spéciaux... Il y a que les Roumains de Renew qui sont bien, les socialistes roumains ne le sont pas forcément.

V.M. : Et l'article 2 du coup de la résolution, on en a parlé avec Victor, mais c'est un Belge qui s'était fait agressé dans un parc en Belgique, et donc c'est un petit article 2 qui parle d'une condamnation ferme de cet évènement...

P.K. : On l'a pas retenu cet amendement ?

V.M. : Heu...il est dans le texte.

V.B. : Oui, ça a été malheureusement adopté, ils ont déstructuré la résolution.

P.K. : On s'en fout, on a l'article 1 !

V.B. : enfin, ils auraient pu le mettre en considérant...

V.M. : Ensuite, plus globalement, c'est une question qui m'intéresse, c'est comment on traite aujourd'hui dans l'UE avec la Pologne, la Hongrie avec cette "hypocrisie" — qui est à la fois le seul levier de l'UE qui est "on a des fonds à donner et on essaie d'introduire de la conditionnalité — pour autant, c'est assez long, ça prend quelques années.

P.K. : Hmm... Alors je dirais que vous faites une erreur, sur la longueur. Regardez le plan de relance ça ne prend pas 10 ans pour décider.

V.M. : Oui mais pour les mécanismes de conditionnalité

P.K. : Pour la conditionnalité, ça c'est les règlements, ça prend un peu de temps mais c'est normal il y a tout le monde autour de la table, et c'est budgétaire donc c'est à l'unanimité. Vous remarquerez qu'on a quand même tordu le bras de la Hongrie sérieusement sur ce sujet-là. (À son assistant) Ils avaient été difficile sur la conditionnalité ?

V.B. : non, ils avaient utilisé leur veto sur le MFF pour faire pression sur le règlement sur la conditionnalité.

P.K. : Ah oui, alors ça c'est intéressant, c'est la guérilla de la Commission. En fait, en 2020, il fallait qu'ils adoptent le budget pluriannuel. Il y avait en même temps le vote du plan de relance, du budget pluriannuel à l'unanimité et du règlement sur la conditionnalité. Et donc unanimité pour le plan de relance et le MFF. Alors ce qu'il s'est passé, faut faire un peu de guérilla institutionnelle là-dessus, si le MFF n'était pas voté au mois de juillet, ça allait repousser tellement qu'au mois de janvier allait entrer le mécanisme des douzièmes, c'est à dire la reconduction du budget de l'année d'après mais payé au douzième de l'année précédente, sauf que c'est un budget de paiement uniquement, pas d'engagement. Et qui décide des paiements ?...Les Hongrois ils faisaient les malins

V.M. : La Commission.

P.K. : La Commission. Et c'est à sa discrétion qu'elle exécute les paiements. Donc elle a fait savoir à la Hongrie, et aussi à la Pologne : si vous ne votez pas le budget, vous n'aurez aucun paiement tant que le budget n'est pas signé. Donc la Pologne et la Hongrie qui attendaient d'importants paiements se sont dits qu'elles ne pouvaient s'en passer. C'est pour ça que je dis que les institutions européennes, à commencer par la Commission ont un levier pour avancer et c'est le levier financier et budgétaire. Sur la question de la conditionnalité, il a fallu le temps qu'il fallait mais il y a eu le règlement sur la conditionnalité qui a été adopté dans un temps, à peu près normal pour un règlement quand on voit qu'un règlement de contrôle des pêches est en débat depuis 5 ans, alors 2 ans pour un règlement sur la conditionnalité, ça va et c'est normal on est 550 millions, 27 États, donc ça prend du temps de faire tout ça, donc maintenant c'est sur la mise en oeuvre que la question se pose. Sur la question des résolutions LGBT ça n'a pas été difficile et ça n'a pas pris de temps à se faire. Il a juste fallu trouver le levier pour le faire donc, mois de mai on lève le lièvre, mois de juillet courrier envoyé, mois de septembre les déclarations sont supprimées. Aujourd'hui plan de relance de la Hongrie, concrètement ils sont face au mur quoi. Même si ça a pris du temps...sauf qu'on utilise le levier adéquat, on était dans un moment où c'était assez bien aligné parce que la discussion du MFF est l'occasion de penser ça. Bon...l'Europe se fait et c'est vrai que les exigences mises sur la place au moment où les pays adhérent n'ont peut-être pas prévu l'idée qu'ils divergent par rapport à ça, donc ça prend du temps pour arriver à un aboutissement et en même temps pour utiliser les leviers.

V.B. : il nous reste 4min avant ton rdv

V.M. : Alors une dernière question peut-être, est-ce que l'UE est une zone de liberté LGBTI? Qu'est-ce qu'il lui manquerait pour ce le soit si non ? Si oui, pourquoi ?

P.K. : Est-ce que ça l'est ? Alors, ce pour quoi j'étais aussi attaché au moment de la résolution et pourquoi je suis attaché au mot liberté. C'est qu'au fond on pourra toujours légiférer sur tous les droits formels qu'on peut imaginer. Et de fait il y a plein de pays où les droits sont quasi les mêmes. La discrimination en tant que telle, légalement, elle est peut être partout. En revanche, la liberté, elle, d'être...dans la rue, pouvoir circuler librement, d'être qui l'on est et d'aimer qui l'on veut, c'est loin d'être acquis. Donc cette résolution c'est aussi de projeter ce que l'on souhaite, ce que l'on veut affirmer. J'ai toujours la conviction que le discours politique à une

portée normative sur les esprits...je sais pas si on dit ça, ça fait un peu politique de bureau, mais c'est vrai...le discours politique doit aussi avoir une portée sur l'état d'esprit de la société. Alors quand on dit ça c'est une façon de dire "mais attendez, foutez la paix aux gens". Donc la réponse à est-ce que c'est une zone de liberté LGBTI, je ne sais pas, en tout cas on aimerait bien.

V.M. : D'accord, très bien, merci beaucoup ! Je ne vais pas vous mettre en retard.

c - Miguel Chambel

Secretary-General of the LGBTI Intergroup of the European Parliament

Date: 14 December 2022, 3pm

Place: Place du Luxembourg, Brussels

Language: English

Duration: 38min

Vincent Machado (V.M.): So first, I'm a master's student at La Sorbonne, but I'm currently in Brussels studying in European Affairs. And I decided to write my master's thesis on, well, the title is like, is the EU an LGBTIQ freedom zone? Studying the European response to anti-LGBTIQ, let's say, resolutions in Poland. So the starting point of my thesis is mainly the resolution claiming that the EU is an LGBTIQ freedom zone. And I already got the chance to interview Pierre Karleskind and his assistant. So I already have like some knowledge about that. I also tried to research a bit. And then, so obviously, like these people all told me that I needed to meet you because you have probably many things to say. And it's like you've seen all this ongoing debate and resolution, etc. So, yeah.

Miguel Chambel (M.C.): They did well.

V.M.: Yeah! So maybe just to start, so you're the Secretary General of the Intergroup. We can start with like just what's your job as a Secretary General?

M.C.: Yeah. So, I mean, you must know that the Intergroup is sort of like an informal grouping of MEPs, right? They're created at the beginning of each mandate. They need political support by a majority of the Parliament's members. And usually there is, I think right now we have 27 or 28 official Intergroups. And the LGBT Intergroup is the single biggest one of all of them. So we count on 157 members as of last week, at least one per member state, and with a big diversity of parties. And we've been around for 25 years. Actually, this year was our 25th anniversary, so that was quite great. What is the Intergroup as such? So we, basically, we work with a Bureau of six members. We have our Vice President for Renew. We have then two Co-Chairs, four Vice Presidents. They're basically in charge of giving direction to the Bureau. I, as Secretary

General, basically advise them on what to do, on what decisions we should take. I propose, advise, draft, consult. They decide. They tell me to do things and I do them. There's three, basically, remits of action. **The first one would be, obviously, our parliamentary work.** That can be all the work that we do within the Parliament, writing written and oral questions to different institutions,

proposing amendments to reports in which we might have a chance to kind of influence the language to make it more representative or more in line with the demands of civil society. Or if, for instance, there's no LGBTIQ angle, then we would like to include one. We can amend those reports. Coordinating majorities across political groups to vote in favor of certain things. If we have votes in plenary that are potentially, like, deleting LGBTIQ language, then I send vote alerts to members to ensure that they are voting in favor or that they are informed, actually. That would be one. **The second one is a bit monitoring the work of LGBTI rights inside the other institutions,** but also in Europe and, if possible, in third countries. That means following the implementation of the Commission's strategy, not only LGBTIQ strategy, but gender equality, children's rights, the Human Rights Action Plan, the European External Action Service. That means engaging, for instance, also with the European External Action Service or with the Committee of the Regions, when they were, for instance, also adopting a resolution on the strategy. And that also means engaging, for instance, with authorities of member states where potential violations might be occurring. You might have seen that the Intergroup has addressed letters to parliamentarians in other countries or to heads of state, to ministers in charge of certain files, to basically provide arguments in favor of the defense of LGBTIQ persons' rights, but also sometimes to just bring issues to political awareness and to give it media notoriety. That was, for instance, the case of the Zan Bill in Italy in 2021 on hate crime and hate speech. That was finally killed when it went to the Senate, much to our dismay. So that's also in the second pillar, trying to monitor what's happening in Europe and also in third countries when it's indeed possible. Like, for instance, in Serbia, Europride, you must have seen the role that the Intergroup played.

And then **the third part is obviously being a bridge to civil society.** So we regularly consult with civil society organizations. We take their points into consideration if we're trying to amend the report. And obviously I'm going to go to them to ask their input, what are issues of priority. If a report comes out on, let's say, Albania, then obviously I want to get the input from Albanian organizations onto the report. And so we try as much as possible to make it consultative. But also when we do organize events, we have to make sure that there's always at least one civil society expert. Because, I mean, we're experts, but at the end of the day, there are experts too.

And they're the ones who are on the ground and seeing things with their own eyes and reporting back to us. So my job is to try to find a way in which we can integrate their demands onto our parliamentary work. And try to make sure that we have cross-party support. If that answers broadly.

V.M.: I was about to ask questions about what you already answered. So you're working mostly with the co-chairs and the vice presidents. And then maybe just with a more personal angle. For how long have you been working with the Intergroup?

M.C.: It's been two and a half years. So I started the week before COVID. That was fun. It was quite interesting because when I started we had around 120 something MEPs. It was post-Brexit. So a lot of MEPs, I think we had 15 that had left. And then I just started. My objective that I set out to myself when I was interviewed is that we're going to increase our membership substantially. Because **we want to make sure that this is not a party-politics sort of fight**. To me it's not an issue. I mean, in my personal life I do whatever I want. And I vote however I want. And I am affiliated to each other party. But in my job I wanted to make sure that all parties that are democratic and that believe in democracy and in fundamental rights are engaged in this sort of work. That's why it was important for me to have more members from the EPP and to diversify our rooster. To have, for instance, one MEP from each member state which was not the case before. So I really tried to work hard to make sure that we engage more members from the EPP. I mean, we already had a lot from the Left, Greens and Socialists. But it's always good to have more, because the more members we have, the more capacity we have. For instance, to adopt language in a certain committee. If we have, I don't know, a bunch of members in the Committee on Civil Liberties co-signing our amendments, including maybe the shadows that are already sensitized to this issue. Then it just makes it a little more easier to actually have it go on to the final text. So it's a bit trying to make sure that this network building is sort of sound and that we keep continuously engaging members with the information that we provide them, like in trying to find initiatives that they also feel inclined to co-sign. You will notice that not all of the MEPs that are part of the Intergroup are standard bearers and going to prides and being super queer supporters, and that's also not the point. The point is to make sure that throughout the mandate we sensitize as many members as possible. And that when needed we can count on their political support. And this I think we've managed to do quite well.

V.M.: What were your previous experiences concerning LGBT rights? Or was it broader?

Or what did you do before this?

M.C.: I was a project manager at the Council of Europe. I was working in the Sexual Orientation and Gender Identity Unit. So I mean, pretty much the same.

V.M.: Really related.

M.C.: And then I also worked in Roman Travelers Division, where I was a project assistant for I think roughly a year and some time. So all in all in the Council of Europe I was there for like two years. So always working in the field of human rights, and then now still LGBTI rights. But it's somehow still broader, because our work spans across nine committees.

So, you can easily talk about LGBTI issues in the Committee on Foreign Affairs, but also in the Committee on Employment, when you're talking about housing for instance, which is a social right. Or if you're talking about gender equality that also fits in. Or if you're talking about development, like access to HIV-AIDS medication for LGBTIQ people. So it spans a bit more in terms of field, but it's always kind of topic specific.

V.M.: And are you personally committed in an organization or anything?

M.C.: I mean technically I could but I'm not.

V.M.: So how does the intergroup function? What about your meetings? How do you work usually?

M.C.: So basically like I said the Bureau is there to kind of choose the direction, where we're going for instance. What are our focuses for next year, like in terms of priority obviously mutual recognition of parenthood, and equality bodies and the hate crime proposal.

But then the kind of everyday today work it's me, so let's say that something happens this week in Romania, that there's a bill that proposes to ban any discussion on gender identity in schooling contexts. This by the way is true. It happened. And so my job is to basically contact with Romanian associations, try to get as much information as possible.

I'll shoot out an email to members informing them of what happened, one or two days later we have a letter that I'm circulating with the approval of the Bureau, to kind of get political support to send it to the authorities. And in this case we addressed the letter to the President, asking the

President not to promulgate the law, but to ask for a constitutionality check. Which he did. And in the end the law never came to life.

But it could be something else like, we have a report on access to housing, access to safe and affordable housing I think it was called but there's nothing on LGBTIQ youth homelessness and that's obviously an issue of priority. Because we have NGOs saying that among youth homelessness, there's a disproportionate amount of queer youth, because they've been thrown out. Their parents don't accept them, they're in difficulties. And so for us it's important obviously that this is reflected. So my job is to contact organizations to get information, draft those amendments, make them approved by the Bureau, and then if they are approved by the Bureau — they always are — but when they are approved by the Bureau, to share with the members that are intergroup members, in that specific committee to get their support. So that means that we kind of try to engage all the members that could potentially be concerned in that action. Or I'll give you a third example like what happened with EuroPride: When we addressed this letter that was signed by I think 140 members, including the group leaderships, basically calling on the Prime Minister not to bend the pride. I mean they didn't have the possibility to bend pride because it's not them organizing, but they could bend the march, which they sort of did. But then didn't, but then did, but then didn't. It was like a back and forth. And so we also addressed the letter to the Prime Minister, and to the President, kind of bringing out human rights arguments. But it could be anything else. It could be like organizing a meeting between the Bureau and a Minister, the Minister for Equality of the current Presidency for instance. Or a Minister with a meeting between the Bureau and a certain Commissioner, to talk about topics related to that. It could be justice or it could be equality. So my job is a bit everything, also communication, because our channels are maintained by me.

V.M.: Well you foresee my questions. So maybe we can go like deep in the Polish case. And the thing like when you started working here. It was like the period when like some cities in 2020, at the end of 2019 actually then like progressively in 2020. So, what was like your reaction, like your and the Intergroup's reactions to the progressive resolutions of Polish cities and regions, claiming like well they were not LGBT friendly in another way?

M.C.: So actually the situation had been ongoing for a bit and by the time I arrived. There had already been a resolution in the Parliament denouncing these declarations and charters. So, for instance the activists of the Atlas of Hate. They were quite prominent at the time.

They had already been invited to the Parliament by the previous secretary when she was working in the Intergroup. The Intergroup had already organized a sort of a press conference with them where they showed the Atlas of Hate, the map with all of the cities and regions. So the situation was developing as it was. Basically the way we tried to approach it was: we organized events to give visibility on it, we made sure that for instance, **when there was the article 7 report on Poland, that it also addressed those issues.** And we made sure that these amendments were voted in plenary by a big majority. We at some point also organized a meeting to Poland, so a meeting mission of the Bureau to Poland. We were supposed to go in person but then it was December, and all the restrictions kind of came up again, so we just did everything virtually. And we met with civil society activists and for that we included the European Ombudsman. We met with ministry officials, we invited two or three ministers that obviously did not accept and send some head of division to have meetings with us. We met for instance with the MPs.

There's also an intergroup in the Polish Parliament and we had a meeting with all of them, well not all of them but there was a large majority of the group that was present to engage in discussion with the MEPs. So we kind of followed the situation out and throughout. And at some point, I don't know if you saw that but **we also nominated the Atlas of Hate Activists for the Sakharov Prize** for freedom of conscience. They unfortunately didn't win but we managed to get them up until the three finalists and that was quite good, because it showed that **the job that they were doing was human rights work.** And it was not political ideology as some people want to portray it. So in a sense **we kind of tried to push from many different points, including putting political pressure on the commission to start infringement procedures, which in the end they did** and finally they were sort of discontinued. **So, the infringement procedures were announced on the basis that there was lack of sincere cooperation from the authorities. But then the authorities sincerely cooperated, and therefore the infringement was null, and there was no court case for instance.** But we saw that **this political pressure led to many zones and regions kind of withdrawing from the resolutions they had adopted and that's a very good outcome, that obviously it wasn't forced by anyone. I think it was the threat of losing EU funds to these municipalities, that came from a political pressure built up on the commission, that came not only but also because of the work that the Intergroup did and many other actors including civil society,** which were really at the front lines. So **I think this combination of factors** kind of resulted in that. And I gave you I think an array of things that were related to it.

V.M.: So about... Well maybe about the resolution precisely, because this resolution, the second one in March 2021 that made a lot of noise politically and in the media. People saw it in every EU country, some more than others. But why was this resolution made and proposed?

M.C.: So I think maybe Pierre already replied to a lot of that, gave you a bit of context.

The idea came from his office. It really was the fact that we're coming to the two year anniversary of the first resolution that had been adopted and at this time still no infringement procedures had been initiated or announced. It was still unsure whether funds would be cut, whether there was going to be any restriction. **There was this whole idea that EU funds should not be used for projects that were against EU values.** But in practicality it was not really happening. And so we thought well... I mean we keep talking about LGBTI free zones, like what message could be sent to kind of reassure people in Poland but also throughout that the European Parliament stands by their side? Because **at the end of the day it was symbolic. It was not legislative, it doesn't change realities overnight. I mean I would wish for that to be true.** But I don't think that would bode well with member states and their sovereign powers. But basically it was supposed to be a signal, that at least the elected politicians in the House of European Democracy are on the side of civil society, and are on the side of diversity. And I think that that's important, in the sense that not only was it symbolic and it went all over the media. But it also got heads of government, Commissioners, regionally elected members, locally elected MPs, kind of partaking in that discussion. And we saw for instance the Committee of the Regions adopting also a resolution on the topic, and having events on that topic, and thinking how could we translate this initiative on to the local and regional level, how could we make sure that our local and regional elected people also engage in this discussion. And for instance in our interactions with them, we said okay this shouldn't be a top-down attitude because this is not how it's going to go. It should always be a bottom-up initiative where for instance your city, municipalities and your regions can engage with civil society organizations and ask them "What do you need us to do to ensure that our city is safe for this community? What should we be doing more that we're not doing yet?"

Or what is it that we should start doing to make sure that we can actually say that Lisbon or Munich are LGBTQ freedom zones?" And I think that it initiated a different kind of political debate. I mean some people will say that it was wildly symbolic and it had no substantive value. I'd like to disagree. I think that this is a house of politics and we were doing politics when we did that, and it opened up a different discussion. I'm happy to see also that it was sort of a

symbol that in the parliament there's a wide majority in favor of these issues, which is not something that would have happened for instance 10 years ago.

And the issue would have been maybe, I wouldn't say taboo, but maybe not as wildly supported.

V.M.: So this is a bit how it came to be and maybe it's a broad question about maybe the work in LGBTQ matters but is it that easy to get consensus today like within the current legislature?

M.C.: Well on non-legislative files we've seen a lot of great language, that would have never been adopted five years ago. **On legislation we will see.** Because we're just now getting those files on the table and **I mean here really the biggest problem is that when the parliament is co-legislator. Usually the legal grounds for these laws require unanimity in the council which makes it substantially difficult to see those laws coming to life.** And that's the case for instance with the Equal Treatment Directive, the Horizontal Equality Directive which is stalled since 2008, because it requires unanimity. And there has not been unanimity since the last 14 years. So at least I think that we can be somewhat reassured that in the parliament when push comes to shove and legislation is on the table, that there will be a majority in favour, which is really good. The question remains on whether there will also be.

V.M.: After this resolution being adopted, who do you work with like in the commission? Because you could work like with the DGs in charge of budget, and like conditionality of giving funds to countries according to whether they respect or not the principles of non-discrimination and all. So what are the main organs you work with in the commission? And also like with the council on these matters? Is it easy or not?

M.C.: I would say that there's not. I mean I'm not saying that the cooperation doesn't exist, like we maintain contacts but the work is very different. Like the commission's job is to propose legislation, the parliament's job is to do politics and to adopt it. So with the council we have little to no contact, I would say. Like, we have sent letters to representatives of the council, to ministers to kind of give sort of awareness to certain issues, but not in the context of like being council members, more in the context of being governments, national governments and changes that need to happen nationally. So it's not an issue for EU legislation. And in the commission, I mean obviously like we keep contact with cabinets of commissioners where we voice what would be the priorities of the members and specifically the intergroup for certain pieces of legislation. But really, I mean a lot of the work of the intergroup is internal, is to make sure that

there's majorities in favor of certain things, making sure that there's agreed language on text that is supported broadly. So yeah, much of my job because I'm also only one person is focused on like our internal work within the parliament, because there is a lot.

V.M.: Okay.

M.C.: I don't know if that answers your question.

V.M.: And do you always like manage to..., because you were talking about that trying to get also the members of EPP on board so of course some of them are members of the intergroup. But is it always easy on any issue within the intergroup?

M.C.: No, no, no. Because you still have some personalised position. Yeah. There's issues that for instance we don't really...that are quite controversial even within the political groups.

There's delegations that are more on the left, delegations that are more on the right.

Like if you talk about I don't know sex work or surrogacy, like positions can be quite different.

At the level of the intergroup we don't really discuss those issues. Firstly because I mean surrogacy is not so far of any European competence and there has been nothing on the topic.

And sex work could be maybe a bit different because it's about whether the work is recognised and people have access to health and social insurance etc. But I mean those issues can be quite divisive and so for instance we don't really approach them, but on the issues that we have discussed, it's true that like not all intergroup members react to all intergroup initiatives. So there will be letters that maybe some members of the EPP will feel comfortable to co-sign. And others where they won't.

And then in that case they just abstain it's not a consensus thing. It's a consensus within the Bureau inside what we do and we always have some EPP members on board, but with the rest of the members it's an invitation. If you want to participate in this initiative then you're free to and it's true that more often than not, there's a small number of EPP members participating. And that can depend for instance because their offices are really busy or because they actually do not agree with that position. But like I said it's not a sprint, it's a marathon. And the point is to sensitize over time to some issues that maybe let's say two years ago were more difficult to discuss and maybe now are not anymore, because we've managed to kind of get people engaged in that discussion.

V.M.: Hmm... Yes. Maybe I'd like to have your opinion and also experience, over like how did the EU institutions... What did I write? Oh yeah. We were talking about evolution, like in terms of the current evolutions when it comes to EU and EU competence about LGBT rights. What can the EU do today? What is the EU finally doing, that it was not doing before? What are the evolvments?

M.C.: Okay. Let me maybe go by institution. I'll start with **the Council** because it's easy.

I mean the Council had never specifically discussed LGBTQ issues. I don't think that there had ever been an LGBTQ specific discussion at the level of the Council. And there was a first in 2021 after the adoption of the law by Hungary, the so-called "Child Protection" Law. Let me put it into inverted commas. And I think that was the first time that for instance the Council... The European Council actually has a state, had a specific discussion on this bill. So that's quite positive. You don't see this happening every day. There was even a letter signed by Prime Ministers and European Council members basically saying that they would support the Commission should the Commission bring the case to court.

I think that was quite significant. That's the Council. Easy, that hasn't been much.

Then. Obviously also the Council presidencies. They organize events around LGBT topics, when they fall on that. So for instance Sweden is organizing now a conference on LGBTI rights. As also Portugal did at the time when they had the presidency. So voilà.

For the Commission. First time ever there's a Commission strategy on LGBTIQ equality, even though there was this annual list of actions that you might have seen. It was Vera Jourova that was in charge of it since 2015, but it was sort of a list of actions with little accountability. It basically said what you can do and it was annually adopted, but it was not a multi-year commitment to do something, even though the Parliament had called for it since 2014 I think, with the Lunacek report that was offered by Ulrike Lunacek, that was the co-chair of the entry group at the time. So you might go and want to look at it, because it's very interesting. So I mean the strategy is great: it has non-legislative and legislative commitments. Obviously the second ones interest me a bit more because they grant rights to people that maybe didn't happen before. But the non-legislative commitments are also interesting, because it starts a discussion with Member States on issues that maybe before were not comprehensively or let's say regularly addressed, Whether that's sufficient or not and whether that gives results, that's a different discussion.

What legislation does the Commission propose? The Euro Crime Extension, the Mutual Recognition of Parenthood, the Equality Bodies Directive: all of the three of them are currently on the table, as of last week. That's great. Will they be adopted?

Different kind of discussion. So I mean you see that there is movement at least legislative-wise because the Commission has proposed no legislation in the last, let me say, 10-12 years that goes specifically to the heart of this issue. And obviously the Mutual Recognition is about children's rights, but it's also about ensuring the protection of migrant families in a sense. So that's different. And having a Commissioner for Equality that has that portfolio is wildly different. Again, whether or not that's effective and how much power is given to this Commission or how much leeway she has in front of the Commission: different sort of question. But for instance when you see the President of the European Commission speaking quite openly about these issues, for instance with the State of the Union speech or whatever, that's a very good sign that things are progressing.

And then again with the caveat: Are they progressing enough or is it still too slow? I'll leave that up to you to explore.

On the Parliament. I mean like I said it's quite different the level of language that we can adopt now, as opposed to 5 or 10 years ago. You see that there's more of a strong majority in favour of these issues and that maybe even in texts where the situation would not be contemplated, now we see some sort of language. It could always be improved.

That's why we're here and that's the work also that I try to do. But we see that there's big advancement in the kind of visibility that the Parliament gives to it. At the end of the day without capacity to initiate legislation, it's always limited to what is on the table.

I mean, the Parliament continues to do politics, and those politics is also highlighting the situation. And I think that in that sense, we've managed to, for instance, also, maybe you saw this year, President of the European Parliament doing a Facebook Live with our two co-chairs. And to me, I mean, it might be symbolic, and it might just be communication and it might be something that doesn't have an impact on someone's life right now, but if I was, like, a 15-year-old kid, listening to that, it's powerful, you know? Like, you see, like, queer members of Parliament, like, being vocal as, like, representatives of an institution. I think that has power. How much power? Maybe neglectable, but voilà. There's change in the right direction. There will always be people that say it's not enough.

I'm maybe part of those people. It's frustrating at times, you want to do more. But I think that what we have on the table, we're trying to do as much as we can, and that's important.

V.M.: And don't you think that you should go beyond, in terms of, like, legal basis, which would, like, of course, like, involve much change?

But isn't the main difficulty, like, the legal basis for defending human rights in general, maybe within the EU? Because you always have to try, well, you can act when it's related to work, when it's related to the market. Yeah, exactly. So basically, yeah, so that was just a remark.

M.C.: No, no, absolutely. I mean, I think that the biggest problem here is the treaties, right? They could use upgrading on many issues. I mean, if you look at how some governments can now veto, I don't know, the financial assistance to Ukraine, or, like, the global minimum tax deal, 15%. I mean, no country should have the possibility to veto such an important piece of legislation. Maybe it's just time that we do away with the autocracies, you know? But it's true that everything that concerns non-discrimination, that needs unity. Or, for instance, this cross-recognition of judgments for the mutual recognition of parenthood also requires unanimity. I mean, that's a huge obstacle that you cannot surmount and obviously, we need to respect the member states' sovereignty, like, the principle of subsidiarity. I'm very much in favor of that. But there has to be some way of making sure that the citizens are protected and that their rights are ensured because at the end of the day, this political project is a political project also for the citizens. It's not just for the movement of the products, services, and capital. For me, the people come first. If there are no people, then there's no market. And if there are no people, there's no capital, there are no services, and there's no products. So, at the end of the day, it's a political project that should serve people's interests. And I think that it's very much in everyone's interests that citizens are protected, that they're not discriminated against, that their families are not broken if they cross the border, that they're not subjected to violence because they hold their partner's hands. I mean, it's just basic decency. But, yeah, that's a huge challenge.

V.M.: And also, there's kind of a contradiction with, for example, the EU accession criteria that have higher expectations in terms of LGBT rights than what we have in some EU countries. So that's why sometimes one can feel like there's a lack of political will to advance on some topics. Because even within this framework, when it comes to EU candidates' countries, they have to reach higher rights, to grant higher rights to LGBT communities. For example, the recognition

of hate crime is a criterion, and it's just something I checked yesterday. So I was like, it's a criteria for candidate countries, while it's not for current EU member.

M.C.: Maybe it's because the recognition of the hate crime that is already stipulated in the law is racist and xenophobic hate crime.

And so far, it doesn't extend to LGBTQ issues, like sexual orientation, gender identity, and so on. But there is a council decision from, I think, 2009, Justice and Human Rights Council decision on recognizing racist and xenophobic incitement to hatred. So I think maybe that's what that refers to.

V.M.: The LGBT hate crime, right?

M.C.: Yeah, that's a different matter, yeah. But at some point you also talked about the conditionality.

V.M.: Yes.

M.C.: I mean, I think that sometimes there is a misconception as to what the conditionality does. And it doesn't, for instance, apply to human rights per se. It does apply to cases of systemic corruption, cases where the independence of the judiciary is threatened, cases where you cannot guarantee judicial independence. It doesn't necessarily apply to human rights violations. And that is maybe a problem, but it's also just a reality. Because I've heard organizations say, yes, because on the basis of the LGBTQ track record, this regulation should be triggered. I mean, I would love for that to be the case, but that's not the scope of it. That's a legal instrument. There are other legal instruments that can be triggered, that affect Article 7, knowing all of the problems that Article 7 has. But that is the article that should be triggered if the values of the EU are not being respected, namely, the rights of minorities, non-discrimination, etc. It's true that there's no conditionality on values. And if such a legal instrument were to exist today, what would be the reality? There would maybe be at least one or maybe a handful of countries that would potentially be in breach.

V.M.: Yes, more than one.

M.C.: But that's a different kind of discussion. Maybe if one day you get elected, you can propose that.

V.M.: I still have time. Maybe just a question, kind of provocative, but is the EU really a LGBTIQ freedom zone?

M.C.: No. I wish, I wish. it's not. But when that resolution was adopted, it was sort of like an ideal of what it could be.

And I think it's sort of an objective to work towards like I said, it's not something that does change overnight.

But it was also politics and politics is to sometimes give a promise of what can change, in what direction we need to go to ensure that we can do that. And there's a number of legal texts that we have at the table, that if we were to adopt them, we would progressively make sure that it's a freedom zone for more people than just cis, straight people. So the short answer is no. But the caveat is that we can try to make it one. And it depends on every voter. If voters vote on to government and on to elected representatives, people that have this in mind as a priority, like...human dignity and decency...human rights, they're not different rights, it's just human rights, then that's something that can potentially change.

V.M.: Okay, well, I think that's all about the questions I have. So yeah, I'll stop this (the recording). Thank you.

d - Maria Galewska

Programme Manager at DG REGIO (Poland Unit), European Commission

Date: 3 January 2023, 2:30pm

Place: Phone call

Language: English

Duration: 34min

Vincent Machado (V.M.): Hello! Is it Maria Galewska?

Maria Galewska (M.G.): Yes

V.M.: I am Vincent Machado, the student you accepted to have a short call with...

M.G.: ...yes I remember you, I know!

V.M.: Well thank you a lot for accepting to share your phone number, it would help me a lot for my research.

M.G.: I am currently in an open space, so I will go to...another place, wait a minute.

V.M.: Sure, no problem.

M.G.: Okay, I am in another a room. So, I am working at the commission, as I explain you, you know how the European Commission is structured?

V.M.: Well, I don't really know how your DG works from the inside.

M.G.: So, basically, I am working for the "fonds structurels" or structural funds. Basically, the money that Poland gets to build schools, hospitals, routes,... So, basically my unit, they do the money from the European budget, and that's my, somehow it's unfortunate, it's only when the money [???] It's probably Hubert who sent you my phone number

V.M.: yes indeed

M.G.: well, he works at DG JUST on non-discrimination, but they don't have money, they just do the policy. Where I work at the EC it's directly on budgetary policy, and basically we work everyday with Polish authorities, national and regional, and we work with them on the projects. And these LGBTI zones...came up to us because we were the only ones who could basically stop the Polish regions and municipalities doing this, by threatening them that "okay, you don't fulfil certain European fundamental rights, that is against the treaties and we will stop the funding". And unfortunately, before that, when it was just DG Just and the Commissioner, also von der Leyen who were saying "this is not in accordance with the treaties", well it did not work because there was no money behind. So, now you see how it works...

V.M.: Yes, that's what I've seen in my research, that...the budgetary funds and the conditionality of these funds were actually the main action to do something and really put pressure on the regions to withdraw from their declarations.

M.G.: But unfortunately, **I still work with the same region and there is still a lot of work to be done on the mentalities of the people, it's also on mentalities to change.**

V.M.: Yes I understand, it is also a social and cultural issue.

M.G.: Of course. So, you can also see that we have...five regions in Poland where the heads of the regions are very...I don't know...

V.M.: conservative?

M.G.: I would say unfortunately close to the Catholic Church which plays an important role. And there was the organisation Ordo Iuris, you know?

V.M.: Yes, I know this organisation

M.G.: They were writing a model for the resolutions then adopted by these regions. But there are 11 regions in Poland which did not adopt this. So it really depends on municipalities. But **in reality, if you have been in Poland, people do not really understand even the**

abbreviation "LGBT"... so, some of the city councils, when you see the Atlas of Hate, sometimes the zones are on the county or the city level. But, at the end, I think because of the mentality, people do not really understand why they should not discriminate on the basis of sexual orientation.

V.M.: So, even when the conditionality of the budgetary funds worked, because they withdrawn their declarations, it did not really change the mentalities, the way people there saw things?

M.G.: yeah...They still think that LGBT, like gay, lesbians or trans people, I don't know what they think, because they don't have education. **We, as the Commission, saw basically that maybe we also need to educate. But this is the competence of the member states, so we cannot really intervene.** But on the other hand, because we reacted in 2019 and 2020, but also were in the new multi annual financial framework for 2021-2027, we were negotiating — my department — with Poland again for the new money. And in the new money, the regulation we have written that as long as the Charter of Fundamental Rights is not fulfilled and the Commission does not validate it, the money cannot go. So, it means Poland, these regions can make an announcement "we are making calls for projects", they would select people to do the projects, for example roads,... but they cannot come back to the Commission and ask for funds, we will not give them money, as long as they don't fulfil the Charter. Also, not only the Charter is in the regulation, but we also negotiated programmes with the regions for the next seven years, and we said "we also want you as a managing authority of the European cohesion funds to train the people within your authority, at the head of the region office, in the ministry of the funds at the national level also...people deciding about the selection criteria of the projects, it's called "the monitoring committee", for each programme there is one monitoring committee. **We said we needed them, because they deal with the European funds and budget, to be obliged to train those people about...well, human rights!** And this should be done at least to these people dealing with European budget, to have so kind of training, some people that explain them like KPH and NGOs involved to train them on non-discrimination. So, of course we cannot intervene in public schools and everywhere but where we can we will try to pay more attention on those human rights. Because it is not so obvious. I deal with some projects which are opened to public and the authorities of the regions said "why do you say I discriminate transsexuals? Everybody can participate" In fact, it was difficult to prove that there was a discrimination. There was one case I think in a region where the head of a city got money from European budget for a cultural center and people, NGOs, wanted to screen a movie about LGBT

and the mayor of the city did not allow to screen the movie, saying it's against "Christian values". But it's very difficult to prove that there is a discrimination and gays are not allowed, but of course it is a discrimination. It is difficult to prove...

V.M.: also, is there some sort of funds going to LGBTQ-friendly projects maybe to support them? Or maybe you cannot really act on that?

M.G.: Well...this is cohesion policy, maybe there is a fund in the European Commission managed directly by the European Commission and the call would be made by the Commission directly and the organisations could then apply directly. But where I work, at the cohesion funds, the Commission does not directly manage. It's a shared responsibility, we have some word to say but who are responsible at the end are the member states. And also, if we only make calls for LGBT then we would have other people coming from other groups, like Roma minority, and ask to also have the a dedicated funding.

V.M.: yeah, I can get that.

M.G.: and.. if we did this we would be discriminating other people...and it's non-ending.

V.M.: Sure, yes I understand that.

M.G.: but what we do, for example, is...the teachers at school have trainings from European social funds, and these funds could train teachers in Poland how to deal with children who have a different sexual orientation. Secondly, we said that European money should also train people working at the social and health institutions because of course when you are a transsexual, you need the hospitals to deal with you. They don't know totally how to deal. It's step-by-step but Poland is a bit awkward, it is not Germany or Ireland where it is more open...I don't know, but I've lived in Poland so I don't know the comparison.

V.M.: yeah...And your action worked for many Polish regions & cities but today there are still a few regions and cities that still have their resolutions that we call "LGBTI-free zones". And did you suspend the funds that were supposed to go to these regions?

M.G.: You know, it is only happening now. **The decision for the money was adopted just in December 2022, and when you look at the cycle of the projects it is now, that the managing projects in Poland will work on selection criteria**, then they would announce the call for the projects, then people would send their applications, somebody would select the applications and only then you can be dismissed or not paid because you have the LGBTI-free resolutions.

V.M.: Ok, so...

M.G.: So, it is long process, **what we have in the programme that was adopted by the Commission is a sentence saying: "no EU cohesion funds can go to municipalities that make any discriminatory resolution/action, or measure that go against the values of the treaties."** So basically, we vote in each programme, for each project funded by the EU cohesion funds, we check this criteria. It is a formal criteria to refuse, for the selection committee that should refuse the project, give them 0 point and they would not be funded. **If you don't discriminate ok, if you discriminate: out, you won't get the money at all.** There should be this kind of process, but we need time to see how it will work because we just adopted the programme and the call for projects' proposal will maybe only take place in March, and then the committee will screen application etc. And this will also depend on who screen these applications and the selection committee.

V.M.: And I had another question...It's really interesting to have the explanation of the whole process because it has many stages, and thank you for that. Hmm...

M.G.: Yes, because from the inside you don't know how it works!

V.M.: It's really hard to know how it works from the outside. Is it the same mechanism with the budget, for example, is there also a conditionality for the rule of law — which is also an ongoing debate, not only with Poland but also with Hungary of course ?

M.G.: Hmm...to be honest, the rule of law...I didn't follow myself this, I followed only directly the LGBT dossier. But one thing is basically for the provision funds is only the **conditionality on the Charter of Fundamental Rights**. And...maybe inside of the Charter there is also rule of law and judiciary. But...well I was in charge of the LGBT dossier. But it is not really done here nor by the unit where I work but by another service at the Commission. Because this rule

of law was not a condition to cohesion funds but to...how do you call it...recovery and resilience plan, well, it is not the same. It was something that is in-between the MFF. I worked on the MFF 2014-2019 and 2021-2027 but then that was another instrument within the "recovery and resilience facility" after Covid, and inside this there was the rule of law conditionality, and because of this, Poland still did not get the money from another pocket, they are two pockets.

V.M.: Okay, so, it's two different services working on this. Just to be sure, the mechanism about the...condition...to raise the fact that there is LGBTI discrimination in a region as a potential motive to refuse funds to a project, so it's new because it's working for the MFF 2021-2027, right?

M.G.: Yeah. **It's in the programme we have with Poland, it's not for other countries** — I hope other countries won't need it.

V.M.: Oh okay, so it's specific to Poland?

M.G.: **Yeah it's in the Polish programme. We did these negotiations with Poland, this kind of... I don't know, for me it was basically against the Treaties and it's good to have this provision in the programme but it should not have been necessary, it should be automatic already a motive of refusal.**

V.M.: Yeah I see, it's supposed to be in the Treaties, so it was just to point out a specific thing.

M.G.: Yeah...**maybe we would need to hire I don't know how many lawyers to prove that it is comprised in the Treaties and that an LGBTI-free zone is contrary to the Treaties.** So now it is the role of the authorities in Poland to go to the municipalities and regions in Poland to tell them: look, if you have your anti-LGBT resolution, you won't have money. And it's already what is happening, sometimes they are changing and they are still withdrawing from LGBTI-free zones declarations and sometimes they adopt new declarations about valuing the Christian values. Some of municipalities withdrew and changed for another declaration about family, men and women,... It depends on the municipalities.

V.M.: And to implement this idea of adding this sentence/this mention of a formal motive to refuse funds, did it come from your unit, or from DG JUST or from the Commission?

M.G.: It was from us. We...work with DG JUST and we asked: what kind of mechanism can we put in place? We saw we had a problem with Poland with this so we looked for a solution. We figured out, ok if you have anti-LGBT claims, you don't get money and of course for DG JUST, for them, it was okay. So we had to conduct the whole negotiation with DG REGIO and them with Poland. Of course they were not so happy with that. But, we said if you don't accept, we don't progress with the negotiations and you don't get the cohesion funds. It was either they accepted or they don't get anything, and I think they understood finally.

V.M.: Okay, that's interesting. Hmm...Can I ask, do you have yourself previous experience in anti-discrimination polices or it came with the events?

M.G.: It was new, with Poland. And nobody in the directorate dealing with cohesion funds has previous experience. Also because I am not a lawyer in human rights...to have something on the dossier. Nobody expected that in the European Union, in one of the member states. It was something strange and I did not have experience but we had a really good collaboration with DG Justice and we were with them all the time that it happened. At the end we dealt with this alone. And it was something new, it triggered a lot of questions from the citizens: how can we give money to these municipalities?! **And the MEPs, people started complaining, we saw that people were expected us to act.**

V.M.: Maybe I have one final question because I am sorry it's a bit long, what are the channels you use with the Polish government or maybe you work with the Polish regions rather than government directly?

M.G.: Actually, both. Our partner apart from the Commission, is the member state and the funds' ministry. But of course, then in Poland the regions also have an authority designated to deal with European funds. So it is both the ministry that coordinate and the regions. Everyday basically we go to them. First, the government said it is not our problem, deal with the regions that have adopted these resolutions, it is not our problem, it's not whole Poland we don't want to deal with this. But eventually, they had to take responsibility as member state because they are our partner and we said we expected them to do some prevention, in accordance with the

treaties and the governance of the European funds. The commission and the Polish authorities not only act but there is also prevention with Article 7, so we asked them why they did not prevent these resolutions to happen. **We called upon them to enforce human rights and we threatened them.** Also, you know, it is not only the European budget but I don't know if you know, but the Norwegian funds. **They came to us to the Poland unit saying: you might have more money at the Commission and a better voice,** so we would also have the same line, to speak one voice.

V.M.: Ok, so you worked jointly with the Norwegian funds?

M.G.: Yes yes, we worked with them, maybe we will have another project with them. Because Norway, Switzerland and Iceland, there are more experts about equality topics.

So they were very keen to go to Poland, to the regions and make some kind of change to help persons and to go hand in hand with the Commission, and also to empower people. **You know we spoke to them in each region, in Poland, there is an Equality Coordinator for these questions but these people because they see the head of the regions don't pay attention to these topics, well they are not important. Even if they say "no this is wrong", the head of the region won't listen to them.**

V.M.: Okay, so they are pretty useless and can't really act.

M.G.: Yes **they don't feel empowered to do something useful. My personal agenda is to make them stronger, to say "look, pay attention to these aspects, that's important human rights and equality and non-discrimination". To empower these people because they are kind of ambassadors for us, we cannot be there. I am alone here. It's better to have some allies in member states and make them feel powerful. Okay the Commission, the Norwegian funds, everybody support them and they should use it to be heard in Poland, they are not listened now.** So it is how it is. But, we hope for better. That the mentalities will change a bit but we have to work on the mentalities and also the situation is definitely not helping...

V.M.: Yeah..but through the budget it was an interesting tool to try to do something. Because for the EU, which does not have direct competence to work on that, to push member states to act change. So well, that was pretty nice.

M.G.: Yes but at the same time **unfortunately sad, that without the money it does not work. But it is how it is and sometimes with the money we can change things for human rights and values.**

V.M.: Okay! Well I think I am done, thank you so much, it took you a bit more than half an hour...I am sorry but really thank you!

M.G.: No problem! Good luck with your research! Thank you, goodbye

e - Jakub Gawron

Co-founder of The Atlas of Hate and Polish LGBTIQ activist

Date: 23 February 2023, 6:30pm

Place: Online, text chat

Language: English

Duration: 1h20

Vincent Machado (V.M.): Are you all ready?

Jakub Gawron (J.G.): Yes, I am ready :)

V.M.: Well, first, thanks a lot for taking some of your time to answer my questions, it will be very helpful for my research! Just so you have the context: I am a French master's student in EU Affairs in Paris and this year I am writing a master's thesis, which I have decided will be about the European/EU response to LGBTI-free zones in Poland. I already interviewed officials from EU institutions but it is obvious that I also wanted to have your point of view. I will of course ask you more precise questions about the Atlas of Hate and also the on-going situation of LGBTI-free zones in Poland, but before that, could you tell me what is your background, maybe in politics or in associations/organisations in relation to LGBTIQ rights?

J.G.: I was doing various activist things since 2004 when I attended first equality march in Kraków. I was co-organizing first equality march in Rzeszów, in 2018, and the next ones. In years 2015-2019 I was a member of social-democratic party Razem (Together). And since 2019 I am co-running Atlas of Hate.

V.M.: Okay! And, in parallel of your activism, did you study or work in any organisation? I forgot to ask where you lived, which might be important also!

J.G.: I live in Rzeszów, it's in south eastern part of Poland, near borders with Ukraine and Slovakia. I graduated from sociology on University of Rzeszów. I was formal member of KPH for a short time - but I prefer to work in informal collectives, like equality march of Rzeszów committee and Atlas of Hate group

V.M.: As you said you have been active in defending LGBTIQ rights since 2004, would you say these governmental discriminations (in discourse and policies) took a harsher turn in 2015? Or was the rise of LGBTI-free zones in 2019 a major turning point? I am asking to have an idea of the broader and chronological context of anti-LGBTI discriminations in Poland.

J.G.: **The LGBTI debate actually took a sharper turn in 2015.** But discrimination also existed under the ostensibly liberal SLD and PO governments. Back then, the governments did not address the issue and treated the LGBTQIA community instrumentally. They promised the introduction of civil unions - then put the draft resolutions in a drawer for years, and removed party discipline when voting on them, so that these were rejected by the votes of their opponents from both the opposition and the ruling parties.

This can be summed up briefly - after 2015 we had open hate speech from the ruling parties, and before it a contemptuous, disgusted and incomprehensible silence.

V.M.: And, regarding the "LGBTI-free zones" that I am studying, it started in 2019, but was it a quick "spread" of local authorities signing these "Charters of Family rights", was it coordinated and did it only come from PiS-governed regions/cities?

J.G.: There are two types of resolutions - "against LGBT ideology" and "Local Government Family Charters." The first was created and promoted by Lublin politicians and local government officials from the Law and Justice party, including, among others, the then governor and current Minister of Education, Przemyslaw Czarnek.

The second type was promoted by another center - the legal ultra-conservative Ordo Iuris Foundation. They wanted to reach out to a wider number of local governments with a resolution that does not explicitly mention the LGBT name, but **recommends ways to detect in local government legislation legal solutions that take into account the needs of the LGBT community and prevent any form of cooperation with organizations that "undermine the identity of marriage and the autonomy of the family."** By that name, of course, it means **LGBT organizations.**

V.M.: Some defenders of these local governments have said that the adoption of these resolutions did not endanger LGBTI rights and that it was just discursive, with no legal impact - that is also a justification that some international and European officials or organisations advanced to say they could not act. What is your opinion about that?

J.G.: It doesn't matter at all. The Supreme Administrative Court has ruled that all acts adopted by voting by councilors are resolutions in the full sense of the word. And if they do not have a legal basis in the Constitution and laws - they are defective and should be removed from legal circulation.

If councilors want to express a position on an issue - let them write an open letter to the media and sign it - but they should not pass it as a para-legal act.

V.M.: Thanks, that's an important point. And now, to focus really on the initiative of Atlas of Hate, can you maybe present it? When did you have the idea, who are the people you work with, and also how do you function? Considering you probably need funds to run the website, update it and so on. :)

J.G.: The Atlas group consists of 4 people

- Paulina Pajak (academic teacher and psychologist), who first started to collect resolutions,
- Kamil Maczuga (financial analyst) - he contacted us with MEPs
- Pawel Preneta (leader of IT projects) - he built the page with map
- Me - I run social media, collect documents and publicize them in media

Atlas came out in 2019, and initially functioned as an online Google Calc spreadsheet. After mine and Kamil's visit to the European Parliament in November 2019, Paul created a page with map, which is a graphical overlay of the spreadsheet with documents.

We collect them by browsing official sites and sending public information requests. We collect the texts of resolutions and their drafts, agendas, meeting minutes, voting results, committee positions, legal opinions, links to recordings of meetings, councils' compositions at the time of election and current compositions, contact information for offices.

In addition, I monitor the local media with dozens of google news alerts.

Almost every day I browse through the bookmarked agendas of local governments that have passed anti-LGBT resolutions. There I look for announcements of zoning repeal projects.

When I come across interesting documents - I post them on FB and TT, tagging potentially interested people from organizations and the media. I mostly choose them because of where they live, work, come from, or deal with this topic in some way in past.

The site is run on a volunteer basis, in our free time. We use free tools, the only direct cost of the Atlas is to pay for the domain. We don't bear costs of legal defence, we're defended by organizations paying for lawyers.

V.M.: What are your goals with the Atlas of Hate? Was it expressly to draw the attention at an international/European level?

J.G.: The atlas has two purposes. The first is to gather a knowledge base about the zones. The second is to keep the subject of zones in the public debate (on local, national, european and international level) and put pressure on councilors for so long that they finally repeal these resolutions.

V.M.: And who were your privileged partners at the European level? Maybe specific MEPs or members of the Commissions, or of course organizations like ILGA-Europe?

J.G.: The privileged partners on EU level are:

MEPs

Malin Bjork,

Marc Angel, Terry Reintke, Pierre Karleskind

Sylwia Spurek

Robert Biedroń

EC

Maria Galewska

Helen Dalli

Vera Jourova

ILGA and Intergroup

Belinda Dear

Katrin Hugendubel

There were more of them, but I cannot remind now.

V.M.: Why was the EU a strategic ally for you in the respect of LGBTIQ rights in Poland? In which way did the EU help you?

J.G.: The EU is made up of principle of non-discrimination. In addition, it uses not only its political, but also economic, to defend it. Therefore, it is a key ally of the Polish LGBTI community.

The EU works in at least three areas:

- The EP adopted 2 resolutions calling on the EC and the Polish government to take steps against the zones in Poland
- The EC is preparing an anti-SLAPP directive to protect whistleblowers against court attacks aimed at silencing them. This situation concerns us directly, we have been called by 7 local governments
- In the new EU perspective, the European Commission has banned the financing of local government units that have adopted any discriminatory resolutions.

I believe that this last, financial measure will be the most effective weapon against zoning. The very announcement of financial sanctions resulted in one third of the resolutions being repealed or modified, and their area shrank from one third to less than 10% of the country's area

V.M.: And as I am taking much of your time, I would have two remaining questions to conclude. The first one would be: Do you think there is still an EU pressure on local authorities which have still not withdrawn their anti-LGBTI declarations? And a second one: a week ago, we

learnt that the Commission has decided to close the infringement against Poland related to anti-LGBTI discriminations on January 26, 2023, what do you think of this decision?

J.G.: It's a pity the Commission did close this infringement investigation. But the EC acted on two levels :

- it put pressure on the central government and still puts it on local governments.

The fact that the Polish government is no longer under pressure does not change anything for local governments. Those with resolutions will remain cut off from EU funds until they repeal them.

I suppose that the EC closed this investigation in order to develop and search for more effective methods of pressure.

V.M.: Were you expecting more from the EU or were you positively surprised by the EU's action, in fighting against these discriminatory resolutions?

J.G.: I am satisfied with this ban on financing anti-LGBT zones. I believe it will be a strong and effective measure. Especially when it will be used with the support of our LGBTI and ally organizations sitting on monitoring committees for EU funds.

For the first few years, the EU's reaction was limited to successive EP resolutions calling on the EC and the Polish government to act. This could indeed be disappointing, as nothing seemed to come of them. Fortunately, the EC listened to the EP's calls and introduced provisions to the EU programs that prevented support for anti-LGBT self-governments.

V.M.: Thanks a lot for all your answers, it helps me to frame in a good way my master's thesis and also to avoid having a French-centred discourse.

f - Andrew Boff

Member of the Congress of Local and Regional Authorities of the Council of Europe (UK, ECR), Conservative Member of the London Assembly

Date: 24 February 2023, 11am

Place: Online call

Language: English

Duration: 31min

V.M.: OK, so maybe just to have a short introduction, as I did, could you introduce quickly yourself and maybe more specifically, what are your responsibilities within the Congress of the Council of Europe?

A.B.: Right, that's fine. My name is Andrew Boff. I'm a politician from the Conservative Party in the UK. And I am an elected member of the London Assembly. The London Assembly is 25 members who are elected at the same time as the Mayor of London in order to hold him to account. As a part of that role, however, I am also a member of the Congress of the Council of Europe. It is the Congress of the regional government arm of the Council of Europe is divided into a number of sections. One is the Parliamentary Assembly and we are the local and regional authorities. The Parliamentary Assembly is where MPs go along to represent their countries and the Congress is where local and regional elected officials go along. So as I've been on the Congress since about 2010, 2011 something like that, I can't quite remember when I started on it. So I've been on there a while. At the Congress a number of concerns were raised quite recently and **we have a long history of supporting LGBT rights around Europe and have managed to get adopted a number of measures that countries have signed up to in order to protect the rights of LGBTI people.** Incidentally I've used the term LGBTI people and we all know that everybody has an opinion how many letters there's got to be and whether or not there's a plus at the end. Just assume that I'm taking them all in, right? Every single letter is included when I start. Some concern

was expressed recently that despite Poland signing up to statements and recommendations for LGBTI peoples should be respected, should not be discriminated against. There were some concern expressed when some local authorities, predominantly in the south of Poland, rural authorities in the south, started to adopt what they know as a thing called a family charter. Now the family charter, if you read it in the context, if you read it completely objectively, there's a lot there to be supportive of, in supporting the family. It's how those local authorities then

interpreted what family was that created the problem. And there were a number of statements taking place in council meetings and public statements by politicians in the south of Poland about basically saying that they believe that they were being attacked by an LGBT ideology. And as a result of that, they responded by saying some pretty bad things against LGBT people. And even though the term gay free zones came up, I mean, I'll admit there is no such thing. **Nobody would actually declared themselves a gay free zone. That was an interpretation by some campaigners. But it was close to being accurate, really. Because what happened as a result of those declarations is the LGBTI people suddenly felt excluded as though they were being marginalised and in some cases felt threatened.** So the Congress responded by doing a, asked me to, along with my predecessor, a Swedish politician called Yumi Renström. And we were a cross party, **Yumi Renström is a socialist and I'm a conservative, but we tend to ignore those labels when we're doing our human rights work.** Originally started off by Yumi Renström and then I continued it on and we met with the, along with other Congress members, we met virtually, because it was during the pandemic, unfortunately, you know, all the problems with the pandemic, we would have preferred to have gone there to do this, but we met virtually with a number of people. And as a result of our investigation, we produced a report and a number of recommendations. **What struck me most about doing that investigation was that I heard language used about LGBT people that I haven't heard in the UK for about 40 years.** You know, the same old tropes would come up of LGBT people are a threat to children, that they're trying to recruit, they're grooming, they're against the family, that we risk the destruction of our traditional families and all the rest of it. And it was just dumb, you know, there were just dumb things. And you could tell that all the complaints and concerns and worries the people had about LGBT people came from a position of total ignorance. That being said, **there were some not very ignorant and rather malign influences on the debate.** And that came in, I forgot the name of the organisation now, the Polish Catholic organisation, which...

V.M.: **Ordo Iuris**

A.B.: Yes, that's it. **They were obviously organising this.** And I'm often... I mean, the Catholic Church is supposed to be an example of Christian teaching. And **they were doing the most, saying the most un-Christian things about gay people.** I'm forever confused by some of these organisations' attitudes. So the result was we produced a report, not just on the situation in Poland, but also commentary about the situation in Europe, predominantly in Eastern Europe,

but we did raise concerns in other parts of Europe as well. Because one of the things that did make me realise is that sometimes we think once we've achieved a right, then that's it, the job's over. We don't have to bother with that anymore. We've got that right, and then we can move on to other things. It's not true. We actually have to fight for those rights continually every day. The job does not end, because the report used this word backsliding. The thing is, backsliding happens all the time. It's happening in the UK, it's happening in other countries that consider themselves very liberal, right on, and you know, great examples of human rights. But that backsliding does happen. And so it needs constant attention, which is a kind of a justification for the entire Council of Europe, like we needed a justification to the Council of Europe at the time of war. But if it weren't for the war, we would still need the Council of Europe to constantly remind the 46 nations of what we signed up to, what the threats are to personal liberties. So if anything, it proved the value of the Council of Europe, which sometimes we need to do. A lot of people don't understand.

V.M.: Because it's a specific role. And like, for example, in my masters, many are researching, well, it's European public affairs. So many are focused on EU institutions. But in the field of human rights, the Council of Europe has a key role to play. So I thought that was also interesting to include this.

A.B.: And you know, the EU has certain roles, and which, you know, it does but the Council of Europe is, you're right, it's their specific focus to not go back to the days of the Second World War. And you know, how did the Second World War start? Well, it started with minor interactions of people's liberties, which built up to what we all know about. And that focus for us in the Council of Europe is very important. You know, we don't talk about milk quotas, we don't talk about grain or anything like that, you know, or trade or anything. We talk about human rights.

V.M.: And that was something interesting when you said that, like, it was a cross-party initiative and report that you did, and that, like, in these, in human rights issue, and so including in LGBTIQ issues, you would go and people, like parties, would go beyond labels to defend those rights. But the thing is, like, is it, would you say that in these matters, there's a new cleavage between, like, geography and culture replaces the traditional political cleavage? Because it might be...

A.B.: Yeah, you absolutely have got it in one, because I've often wondered, the Council of Europe, we're all elected representatives. In our own right, we all have mandates, and so in the Council of Europe, we have, in the Congress, the Council of Europe, we have political balances. Each country has to send representatives that are roughly proportional to their political balance at home, and we organise ourselves in the Congress along political lines, you know, the traditional left-right, or at least two dimensions. But these are often quite irrelevant. Nobody's been brave enough to say, "why are we doing this?". Let's not do this anymore, because there is, in my delegation, you know, I'm a Conservative, in my UK delegation, the head of our delegation is as far left-wing as you can imagine, so distant from me politically, you would say. And yet we have, economically, we'll disagree on all sorts of economic issues. But on human rights, we're like, you know, we're like that. There is no difference between us. And you'll find that in most of the Congress work. But

you so rightly pointed out that **the divisions that we now tend to have are cultural divisions, they're ingrained, ingrained traditions, and prejudices that do tend to be, I'm just guessing here, I haven't written a thesis on this. There does tend to be geography.** That's right. So for example, I've heard some pretty poor things being said about Gypsy Roma people, mainly from, I would say, Southeast Europe. I don't hear it as much from Western Europe. I hear similar comments. And because of Europe's diversity, of course, but it's not uniformly diverse Europe. There are different minorities in different places and that brings challenges in themselves. So there might be different kinds of racisms depending on who the races are and where they are in Europe. So I do think your analysis is right. **It's more about geography and tradition rather than where you are on the political spectrum.**

V.M.: Yeah and also considering that, for example, you seat with the ECR group in the Congress, and in this group there are so many positions reflected, I guess, and also there are, expressly, there are Polish regional leaders that adopted those resolutions. So maybe you had a strategic position considering you were part of the same political group. I don't know to what extent does it really matter, the affiliation with the political group. Could you have maybe less formal talks with these leaders from Poland, from the Law and Justice Party?

A.B.: Well, one of the things that's key to the Council of Europe and its Congress is that we aren't looking for perfection from every single country. We'd have a very membership if we did. What we're looking for in general is that countries who are on a journey towards more human rights, a better organisation of democracy and a greater respect for the rule of law. So

one of the things we do is we monitor each individual country on a regular basis. And we rarely kick people out of the Council of Europe. What we do is we encourage them along that journey because everyone starts in a different place. **Sometimes in Western Europe we're a little too arrogant about our rights** and how good we are when actually we have our own challenges as well. **But there are many countries on an enthusiastic journey towards being part of the European family.** So that means we talk across to people who have radically different views about this. And yes, I mean, I'm in a political group. If I were if I were in the UK, I wouldn't be in their party. I wouldn't be in their party. But that's the case throughout Europe, you know. And they have some difficult views. Now, you've got to be adult about this and say, is it best that I shout at them or talk to them? And I think talking works better. **These are not people...they're not people who are many of the people who adopt these positions do so out of ignorance. They're not actually bad people. You know, we've got to stop labeling people as bad people. They're just uninformed. They're frightened by change.** They are concerned about the implication on their families of radical changes around them. So what we've got to do is inform them and provide a good example. In my home life, in my political role in London, I've represented churches who probably want to burn me, and I've been represented mosques who have some very old-fashioned views about gay people. But I'm unapologetically gay, you know, I am out and proud. So my view has been is if you have to break down that barrier, and if I am seen to be working for these important cultural organizations, then that fear dissipates a little. They start to question, well perhaps all these gay people aren't the evil people we assume they were. So you've got to, even though for some of us their views are beyond the pale, you've got to respect where they're coming from. And this was very much the case in our investigation in Poland. Some of these were good people delivering great services, working very hard for their constituents. **They just had this ignorant view of what gay people are like, LGBT plus people alike.**

V.M.: I think you're right because also even in academia and scholars, scholars...have shown and have proved that talking and having the membership of an organisation promoting values and human rights works better than kicking out people from that organisation.

A.B.: Yes, exactly. I mean, I won't name any particular countries because you're recording this, but there are countries in Europe when we do investigations, when we do monitoring of them, they're right on the cusp of being said, you know, perhaps you should go, I mean, obviously we excluded

Russia and we've never had Belarus. But there are other countries who we just want to be a bit better, really. Start a process, come with us, move towards us, and I'm not going to mention which country.

V.M.: And maybe to go back to, well, the beginning, what made you want to lead this report and to write it? Do you have a special responsibility for these files, I mean, the LGBT files?

A.B.: I've ended up being the rapporteur for LGBT plus issues. I'd like to say that I particularly wanted to do the job, but I think if you're a gay politician, actually what you want to be is a politician, you don't want to be...(laughing)

V.M.: (laughing) yeah, the label "that's the gay guy".

A.B.: I didn't do it reluctantly, but I certainly didn't push myself forward to be the rapporteur, but I'm more interested in housing conditions in London, you know, that's the thing that really makes me want to get up in the morning and do work, is housing. And so, no, I didn't really push myself forward, but as a politician who happens to be gay, then you kind of find yourself channeled into those areas, you know, that's what well-meaning straight people do to you, you know, when they get the issue (laughing), they say, oh, they'll do with that, they'll be able to do with that.

V.M.: It sounds, it sounds, it sounds logic for them, but yeah... And so also, what do you think will happen with them? Because there are still regions remaining, LGBTI free zones, even with the pressure from all international organizations and all. What do you think will happen? And do you think the Council of Europe can still put pressure on these, these regions? Maybe it does not depend on the Congress, but...

A.B.: I mean, you know, we're not going to sell all the Council of Europe never assumes that just by saying something it holds it, you know, because it's a process, you know, going back to we have to work every day. Already we've seen as a result of **that report, that report that we produced has been quoted in the local courts, the ombudsman courts in Poland, and has been used to overturn some of those declarations.** So I mean, so often in politics, you just don't get the result that this actually is a result. So it's been really exciting that that's happened. The process is still underway. And what you know, some of the things we've put

recommendations we put into place are long term. For example, we've asked the local government organisations in Poland to close liaised with local authorities so that they don't get to that position in this first place. Some of those local authorities in adopting those positions don't feel particularly like they want to be told what to do. But perhaps on reflection, they wouldn't have passed those resolutions if they'd known what the outcomes would be. So the process is in place. I'm optimistic about it, but I'm only optimistic for as long as we pay attention to it.

V.M.: Okay, okay. Well, I was about to say about what's the role of the council in that regard, but you mainly answered it. And maybe also, I was, because as you said, the Council of Europe acted in, it's been a long time that the Council of Europe has been *avant-garde* on these issues. And it's not striking, but there is no litigation that was on this specific topic of LGBTI-free zones brought to the Council and the Court, I mean.

A.B.: In terms of the European Court?

V.M.: Yes, in terms of the European Court.

A.B.: Well, there may be ones, they've got many cases in front of them, but that was not the trigger to any of our report. The actual trigger was a number of Polish Members of Parliament who were written to the Congress to, the very start the point was that these Polish MPs writing to the Congress to say, what can you do about this? And this is what we did.

V.M.: Okay, yeah. And maybe I'll go with the last question, not to take much of your time. That would be because I'm, in my research, I'm almost at the end. I mean, there is two months left. And I have this chapter that I'd like to connect the fact that the EU and Europe and the Council of Europe are perceived as obvious LGBTI allies and, or also as an obvious enemy to the Law and Justice Party in Poland. And working on these representations of Europe as the one who tells what to do to other countries. It's a topic we discussed already, but what would you say about how, as Western Europeans, we can influence the decision-making and the withdrawing of these resolutions, not being typical Westerners telling the East how to act?

A.B.: Yeah, I mean, it's not got to, it mustn't be seen, you're quite right, as any particular group of countries telling a country what to do, if however it's all 46 countries. You know, ultimately people sign up to things. If you want to become a member of a club, the club has rules and everybody gets to vote on what those rules are. And if a country signs up, gets the benefits of the membership of that club and then says, but we are willfully not going to pay any attention to these rules, then you've got to say to them, well, why are you still a member of the club? You can leave, you know, nothing stopping somebody resigning from the Council of Europe. But they know that the Council of Europe is such an influential body, that it is something that it is good for a country to be seen part of. It's a statement to their own people to say, minimum standards of human rights, democracy and rule of law will be observed because we are members of the Council of Europe. You can't just say "I don't want to do that". You may say "give me time". You may say "we're not there yet", or "we have challenges". These are all these are all fine. But we can't say we're just not going to obey the rules, especially since you wrote those rules. You are part of the decision making. When we make resolutions, everybody makes a part of it. You can indicate your dissent if you want. And there are whole processes for some parts of the European Convention on Human Rights to be missed over, you know, I mean, they're everybody because there's such a diverse legislative environment into these countries that sometimes those rules from the top just physically don't...they just cannot work. We have problems with that in the UK because we don't have a written constitution. And therefore it creates all sorts of issues for us. It looks like we're not very supportive of the objectives sometimes when we have to renege from certain parts. But there were good reasons for doing it good arguments, and...so yeah if you don't want to be part of that club that's fine that's your choice but don't try and get the benefits from it and then not obey the rules, applies to the EU as well of course.

V.M. Yeah sure.

A.B.: And also as we do know voluntarily some of them in Poland for example and those other countries Poland got subsidies from people like Norway who are not members of not members of the EU it wasn't EU funding support and Norway said we're happy to support you but we're not going to support you if you take this line and we drew funding and and you know if you don't take the money you don't want to take every you don't want to take up the obligations don't take the money

V.M.: That's the main mechanism that was adopted even like from the EU the EU and Norway did the same with the funds they were just like okay we we can't punish you but what we can do is like we are offering you some benefits but you're not going to have them if you don't abide by the rules you accepted to follow so yeah...Well thanks a lot for this it was a pleasure to interview you

A.B.: All right and...um once you get um... uh the conclusion to your work, do drop me an email!

V.M.: okay i'll send it i'll send it to you no worries.

A.B.: you're very welcome thanks

g - Rémy Bonny

Executive Director of Forbidden Colours and LGBTIQ Activist

Date: 4 April 2023, 10am

Place: Online call

Language: English

Duration: 48min

V.M.: So, maybe just to enter the discussion, could you just introduce yourself and maybe also Forbidden Colors and maybe your other activities?

R.B.: Yes, of course. So, I am Rémy Bonny. I work and live and was born in Belgium. I work from Brussels at the moment for an organization called Forbidden Colors. Before I joined Forbidden Colors, I was basically working as a political scientist, where I also was doing research mainly towards the opposition towards LGBTQ+ rights in the European Union. So, I have been working indeed a lot on Poland, on the LGBT free zones, for instance, in Poland, but also monitoring anti-LGBTQ+ groups in Poland. I've been working on Hungary a lot, Russia, even Spain and Italy and France as well, where we've been monitoring organizations such as Manif Pour tous in France a lot. My main background is the opposition towards the LGBTQ+ movement, but also the way that LGBTQ+ rights take form in international relations, basically. So I have been focusing a lot on the geopolitics regarding LGBTQ+ rights. So I have been doing research also on how, for instance, Russian intelligence organizations have been supporting both financially, but also with organizing events and so on, the LGBTQ+ groups in Europe. So that's basically what I personally have been doing a lot over the last years, let's say six to seven years. And then two and a half years ago, I joined Forbidden Colours. Forbidden Colours is quite a young organization formed in 2018 with the King Baudouin Foundation, which is Belgium's biggest philanthropy organization. It was basically founded by six gay business leaders here in Belgium and Brussels who want to do something back for the community and Europe because they have seen, since 2018, what has been happening to our community. We've seen back in 2013 already the things that were happening in Russia but we have also been then more around 2018, 2019, 2020 things started to change also more closely to Brussels and Hungary, Poland and so on. So they wanted to do something back with their community and that's why they reached out to the King Baudouin Foundation which is Belgium's biggest

philanthropy organization to do something. And then, throughout that basically, they came with me to basically say we meet also some people who are experts in LGBTQ+ rights in the European Union to work for us and to do something. So what do we do with Forbidden Colours now? We have basically two branches. One part is the branch with the King Baudouin Foundation which is mainly **a philanthropic branch**. We do fundraising and support financial projects all around Europe on LGBTQ+ rights which are mainly very grassroots projects. One project that we do is sort of like a school ranking in Poland where we ask students, well ones that are apart of an organization in Poland, ask students to rank, to fill in a survey and rank their own school in accordance to LGBTQ+ inclusivity. It's quite a big project. It started as a very grassroots project by students back then but now it's about 20,000 students participating in 2,500 schools and so on. So this is the kind of project that we support with the philanthropic branch and then next to that we have an **advocacy branch** where we specifically focus from here in Brussels on trying to advocate for LGBTQ+ rights but always with an intersection to democratic security and democratic resilience. So basically it's a little bit what I've been working on, monitoring and doing research on before. We do a lot of exposing of anti-LGBTQ initiatives in Europe and try to advocate against that. So currently in the last six weeks we've been working hard on the EU court case against Hungary, against the anti-LGBTQ+ law in Hungary. So as you might know there is currently court case pending by the European Commission. So in the last six weeks we've been working hard to convince member states to intervene, to join the lawsuit basically at European Court of Justice on this. So this is also part of the things that we do for it. So it's like exposing anti-LGBTQ+ initiatives and then trying to take them down at least.

V.M.: Okay, yeah, we'll talk about the Hungarian case because I think it's an interesting point to have a comparative approach also on my research. So you said you worked also with fundraising campaigns and all with NGOs at a local level. So maybe it's a good way to switch to the really Polish case. So, mainly the LGBTI free zones started to develop in 2019. So were you already — yes, you were already active — maybe in supporting them or did you take action from 2019 as it was pretty recent or maybe after this?

R.B.: Yes, I was there back in 2019. I remember that I've been working then already doing research and helping them expose also a little bit and the revealed news to the world media as well back then because it all started as you know with a declaration by the by the by the mayor of Warsaw to where he basically did a very very good declaration LGBT, what was it called

again?...some kind of declaration basically a resolution for LGBTIQ+ mainstreaming and all major facilities that the city of Warsaw was providing and as a reaction to that Ordo Iuris started organizing themselves... it was back then also because Gazeta Polska as you might know who distributed these stickers where there was written "LGBT free zones" and we were basically at the start of these entire campaigns, so yes yes I do remember all of them

V.M.: okay okay and maybe what was your your reaction to those LGBT free zones I mean you've worked on this topic so it was not like something surprising I guess for you I mean of course it's still surprising and and wrong...

R.B.: well it's surprising to the extent that it was quite well organized honestly I mean **it was obviously not a campaign that came out of nothing and it was obviously also a campaign that was being that was being organized and prepared already before Rafał Trzaskowski was introducing his LGBT decoration. Ordo Iuris from that very moment started to go to hundreds of villages local communities all around Poland to basically sell their anti-LGBT resolutions** because — they say as you well know that these are not LGBT free zones but it's basically a resolution defending traditional family values. Well I remember there were two types of resolutions the first type was the one that they started that they basically started with which was a little bit more blunt and saying yes we are against LGBT this is basically an LGBT free zone. And then you had the second kind of a resolution which was more like this resolution is good to defend traditional family values blah blah blah.... So yeah, so, it was obviously very well organized and we were quite surprised by the level of organization behind, it wasn't a surprise Ordo Iuris were starting this kind of campaign, no. But the success that they had, and the fact that they were able to reach out to so many people: that was quite surprising though. Because back then, while it was in 2017, I was back then still a student, I was an Erasmus student in Warsaw, so I know the country a little bit. So because of that, I mean Warsaw is a very progressive liberal city such as many other cities. And then in Poland we know the countryside was quite conservative but then still...it takes some time to be able to reach out to all of these countrysides of Poland. And yeah, the fact that they were so successful was quite surprising I would say yes.

V.M.: And maybe as you might have also the EU lens what in your point of view happened at a EU level even though I think it really started in September 2019 while this whole campaign

was during spring 2019 so do you have any comments to make on the way it was pushed at the EU level?

R.B.: Yeah well I think in the beginning of all of this in 2019 with also in 2020 still I think there was mainly a lot of disappointment coming also from the Polish LGBTQ+ communities because they basically felt like the European Commission was not reacting at all towards all of that. And yeah, as a matter of fact, that was true as well. I mean except for a few catchy catchphrases basically by the European Commissioner, there was not really a lot happening except for that there was of course a resolution European Parliament but as you know a resolution European Parliament is not exactly the most powerful legal instruments that the European institutions have and so on... So that took some time for the European Commission to start reacting to that and I must say that's maybe not so much the LGBT free zones that triggered disappointments for the community, and the non-reaction of the Commission. But especially the non-reaction of the Commission towards what the Polish LGBTQ community called the **"Polish Stonewall"** which took place in the summer of 2020 and the fact that about 30 LGBTQ+ activists were arrested in a European Union member state and there was no reaction at all from the European Commission on this. This was the biggest disappointment because I was there actually, I mean, this was like Russia and this was the fact that peaceful LGBTQ activists that are trying to protest against certain things — well in that case it was about hanging a rainbow flag on a statue of Jesus Christ. Yeah, I mean as maybe for the church that's blasphemy but we live in 2020, we lived back then in 2020 already. I mean, come on guys, I mean even in countries like Poland blasphemy laws were not being used for over century already. So starting to use these kind of laws against our communities to start arresting LGBTQ+ activists this is only things that you, that we, saw back then in Russia. And the fact that the European Commission has not had — has not and until this date — has not reacted at all to what happened on that day, I think was the biggest disappointment on this. And yeah, after that the Commission started to do certain things regarding the LGBT free zones though, so it's all started basically with four, if I remember right, four twin cities basically lost their cities because one of them was an LGBT free zone. But again, there the community in Poland felt like they were not doing enough because in that case we were speaking about maximum 20,000 euros for each city I mean... the first reaction of the Polish national or conservative government was basically "okay if the Commission doesn't give 20,000 euros we will give 40,000 euros"... So yeah, I mean obviously that wasn't exactly the other step from the Commission that was giving a lot of confidence towards our community in Poland to convince them that we are standing by them. And then it's

only in 2021, July 2021, that along against Hungary, that the Commission started an infringement procedure against Poland and well it was not supposed to be the way we were, I was asking the question but in 2023 this infringement action was closed while of course the Hungarian case is going on and will go to the court. So, **I think there were many disappointments around this but there were a few things that happened in between though.** The Commission showed a little bit more teeth than what they would have done with an infringement procedure so, for instance on the recovery funds or the fund that was created basically to recover from the COVID-19 economic crisis, there the Commission basically sets to the five voivodeships which are basically province level in Poland, that they would not get money from the recovery fund or the most money that they ask for from the recovery funds if they didn't withdraw their anti-LGBT/LGBT free zone resolutions. And then four out of five actually did — I need to check of the fifth also did it I'm not sure but four out of five actually did it. So there, the Commission had some teeth to do that and I mean my colleagues from the Atlas of Hate maybe you have seen the project I mean you can clearly see that, since all of this has been happening, **the Commission has basically, through other instruments than the infringement procedure, been trying to hold back some money from all of this a lot of the municipalities** to achieve that the poviats, which are like a region level in Poland, have been withdrawing the resolutions. There are still as you know still I think 50 or 60 (LGBT-free zones) probably we still have but, yeah, in comparison with what we had in 2019. I think also at a point there were 130 or 140 local entities declaring them LGBT free zones. You can see that the Commission, though these financial instruments, at least puts some pressure on them. And then yeah, the infringement procedure which was started at the same time as the Hungarian one and I think that was the only reason why they actually procedure, because there was so much pressure on the Commission by the member states to start infringement on Hungary that they were like "if we do it on Hungary we do it on Poland as well". **I must say though that the legal arguments and the Hungarian case are much stronger than the Polish case.** So, I would like to see the Commission to have a little bit more teeth and try sometimes actually infringement cases even if they are not 100% certain that they would succeed because **in the case of the infringement procedure against Poland, there they would have built mainly their arguments on the employment directive so which is the saying that you cannot discriminate on the basis of sexual orientation and employment there that would have been the main argument but that was a very loose weak argument though because yeah we know we have cases that we've heard that LGBTQ people LGBTQ people have been fired for instance in local schools local city authorities and so on. But it's been very**

difficult to show evidence to court, against the members states. That would have been, I agree, very difficult to win and that's very much different with the case in Hungary whereas basically, you just have to read the law and this is a very clear violation of EU secondary law. What the Commission could have done is the same as what they have been doing now with Hungary, because now with Hungary they don't only refer to secondary law so not only to EU directives, but for the first time ever in the history of the EU they also refer to article two of TEU, so basically the article on human rights human dignity and so on. It is the very first time ever that European Commission uses this and they're pleading in an infringement procedure. We don't know what the outcome of that will be, I mean there has never been a ruling on this so we don't know what the opinions will be of the judges on this. But of course they could have done the same. But again, then you don't know what the outcomes are and knowing the Commission, the Commission only does something when they are 100% certain that it will work. **In the case of Poland I might actually also understand that this is because it would also have created a backlash for the community if we have lost the case.** In Hungary it's different because we are sure that's on the level and the pleading of secondary law we will win. I mean this is a very very clear violation so that's also why the Commission was like okay let's try something new as well and see what we can do with article two. Yeah I mean we're sure we will not lose the entire case because we have the secondary law at oversight already. In the case of the Polish infringing, I think, from a European Commission's point of view, I understand it. Personally sometimes I feel as I'm speaking as an activist is that **the European Commission should be also a little bit more active in their approach and do a little bit more strategic litigation on things to find out how much they can stretch certain things.** So if you would have asked me if I was to be deciding, I would have gone through with it based on article two. At the same time maybe that's what you heard from Polish activists as well there are other discriminations in Poland as well and LGBT free zones are maybe the most mediatized one but it might not be the most impactful one on the LGBTQ people. I'm thinking for instance on the ban of non-legal gender changes while you can change your gender in Poland but if you want to, you have to sue your parents, so I mean psychologically speaking, this is like a cruise ship basically. So for instance that one would also be a good grounds to start the infringement procedure because there for instance you could say there are also directives and services directives so discrimination based on services you cannot get let's say a credit card with your identifying gender marker on that. That's a discrimination services very clearly, so you can easily build cases on that and that's a case, an infringement procedure you can start not only against Poland also against Bulgaria and Hungary, because they also ban legal gender changes

so for instance that would have been an infringement procedure, in my opinion, that would have had much more impacts on the community and much more positive impact in the community, and where probably the legal grounds are much stronger. At least to say, but there we see we have been pushing to do something on legal gender changes for the Commission, yeah quite for some time already, and **the Commission is reluctant because there are also political games playing**...and the Commission, if it was purely Hungary probably banning legal gender change, the Commission I think would have started already on this. But there is a reading by the Commission at this moment that all of this is too crucial and as a European partner at the moment they don't want to upset them too much. The same goes for Bulgaria, **especially since the war with Ukraine, Poland who does host over a million Ukrainian refugees I mean that's a matter of fact yeah obviously the Commission is not trying to upset them too much anymore** and at the same time looking as an outsider on this, it's of course different. If you ask probably a Polish activist we also see that **there is less anti-LGBTQ+ rhetoric coming from the Polish government since the war started a little bit because and that's very smartly played by the by the LGBT+ activists there, because homophobia or transphobia is "Russia" so basically that's the way that they frame the LGBTQ activists in Poland. Basically by doing that it's also becoming more difficult especially for the mainstream PIS politicians to be very homophobic** you still have sometimes the Minister of Justice saying homophobic slurs, but he is not a member of PIS he's actually member of a more radical party. And for instance, we had the case maybe you've seen it, on New Year's Eve at Black Eyed Peas doing a live show on the national Polish television on TVP, which is actually considered quite a state propaganda channel in Poland, but basically Black Eyed Peas was doing a live show in Warsaw for New Year's Eve. It was live broadcasted on the national television and the band members basically were wearing rainbow bands, and basically it was like all of the ultra conservative Poland went crazy on this, but this was allowed to be shown on national television and there again Jobrow the Minister of Justice said like we should not allow TVP to distribute LGBT propaganda blah blah blah....This kind of bullshit you hear in Russia and Hungary all the time but then you had the Prime Minister Mateusz Morawiecki who basically responded to that like yeah it's not up to us to decide what television is broadcasting...which is like 360 degrees change of what he used to say before. So you see that's obviously from the PiS the main, the mainstream politicians within the government that there is a change in the reading now is that homophobia and transphobia is a little bit too too much linked to Russia probably. And yeah, if you are somehow linked to Russia even if it's not entirely true in Poland this is like political suicide. So, that's the development that we see happening but of course yeah, there's

elections this year later. Let's see yeah election time it might be very interesting again to force some politicians to become a little bit more aggressive towards our community but for now it looks like it's cooling down a little bit, it doesn't mean at all the situation is progressing but at least the rhetoric is cooling down.

V.M.: Well thank you because you mentioned many things I was going to ask you about and thanks for mentioning because I didn't think at that but the potential cost for the civil society in Poland if the infringement proceedings had failed and that's interesting and also I was also thinking of the geopolitical context that makes Poland too much of an ally and right now we have Hungary we cannot have also Poland not on our side because also well Poland is facing the Ukrainian refugee crisis and also the war at the borders and maybe you were talking about the way well homophobia was framed as Russian but maybe not today but well also today but the EU is often framed as an LGBTI ally and because you have a broad point of view and expertise on EU and LGBTI rights, so why is the EU...why does the EU appear as a natural ally while basically it's not the basis nor the basic competencies of the EU?

R.B.: So I think that's an interesting. No, it's not the competencies of the EU, it's not that the EU is an example actually on the world stage. I mean although we have a lot of member states that are on the forefront, of course, but in general the EU I would not classify them as the most LGBT friendly legal entity in world politics. Although **there is a matter of fact that Russia has been framing the European Union often as gay Europa** so if you watch Russian national television they always talk about gay Europa and so on so yeah, that brings us back a little bit maybe to the discussion that we have had and **that people like Ian Manners and so on had on the normative power of the European Union.** although I think at this moment for the last decade I would say the normative power of the European Union has been declining a lot that might have been around 2004 when a lot of Central Eastern European member states were joining the EU, you could say indeed that the EU had a lot of normative power. I think because of what's happened with Poland and Hungary, the normative power of democracy and human rights is very little at this moment, so I don't think the EU has a lot of power at all towards our neighbourhood at the moment of a constitution of rights and democracy in general. I mean we've been seeing as well what has been happening in the Balkans over the last five years with an increased populist movement that is growing there again, also Russia playing a big role and destabilisation there. So I would say that the normative power of the EU is not that big and that comes mainly because of Hungary and Poland, and the failure of the Commission to actually

act strongly on that, on the anti-LGBT rise but even on a lot of other subjects as well so yeah, that's for sure a matter of fact. And how do you explain it? it's also partly because I feel like Brussels is too far away, does not always really understand the situation that's going on on the grounds, they live a little bit here in Brussels in an ivory tower...it might sound a little bit populist but if you earn as a regular EU bureaucrat 12,000 euros a month, you don't explain, you don't understand what people in countries like Hungary or Poland are going through. So they don't really understand the severity, the importance of actually what is happening in these countries, which is one thing. But I think it's also partly indeed a question of EU competence, which is not there. I mean, in the case of Hungary now, we have a bit of direct secondary law that we can use and so on, but this is all about, I mean, **in the end, it's not about human rights at all.** I mean, yes, because of Article 2, we speak about human rights now. But actually, if you have a normal official procedure, it's about economics and internal market issues. So if the Article 2 part was not there, this would have been an internal markets case, basically, because you cannot openly sell books for instance anymore in Poland and Hungary. So that's an internal markets issue. So that's a little bit the EU competence that **we need to have a real treaty change, I think, in the coming decades,** because it's also, and we don't understand that **the EU needs to become on a certain level, more also a social union and also a human rights union,** then in the end, the European project will not stay surviving, because we are in fact not just an economic union. I mean, what has happened in Hungary and Poland has actually shown that we are not just an economic union, there needs to be also rules on human rights and so on. With these basic common values and norms that we are talking about all the time, **we should really enshrine them in treaties and make sure that we can actually act upon them.** And as long as that doesn't change, then, I mean, we must see it as it is. There are more member states, I mean, not only from Hungary and Poland, but also, well, we've seen the elections now in Finland over the last weekend, so we've seen what has been happening in Italy. We see things, I mean, Marine Le Pen is still very present in France. Yeah, the danger is there. I mean, the populist danger, the autocratic populist danger is coming more and more close and is gaining grounds everywhere in the EU. If that doesn't, if we don't really change how we're going to work with this EU, then at some point the EU has no big future anymore, I fear. That might sound very existential, but yeah, if we don't understand that the EU needs to be more than just an economic union, it will fail at some point, it might be. Yeah. But yet, and as you say, there are many expectations around the EU and EU's action. And well, of course, there has been some change and evolution since 2019, but mostly symbolic. I mean, like even there is an LGBTIQ strategy, but basically, if there is no legal basis and competence, you can't go really further and

you can't really impose on member states what they have to do. And that's a little bit sad sometimes to read the strategy of the commission, because it's again showing that they have no competence, actually. I mean, yeah, basically just saying, oh, "let's share best practices and these kinds of things". Yeah, sharing best practices with Poland and Hungary does not work. That's not what they are interested in. I mean, it might be nice to share best practices amongst France, Belgium, Netherlands, and so on, but I don't really think that's the most pressing issue at the moment. And yes, **there's a few legislative initiatives in there, which in the end, again, need unanimity in the council because there is no EU competence on it.** So, yeah, we will never get that. So basically, so there it's again showing that the EU competence is not strong enough. What we would like the commission to do more is actually to execute the roles that they have. Because, for instance, they do have the role to, I mean, they are the guardian of the treaties. So they actually should be able to defend the current EU law that we have and courts. So for instance, there are several court cases now that have been ruled. The most known one is the Coman case. So it's basically the case where an American-Romanian couple who married in Belgium. Yeah, the American husband asked for residence, basically residence card in Romania. So he could stay in the EU. And the Romanian authorities, they don't want to recognize the relationship that they have. So they did not give the residence card. So they went to the European Court of Justice and said, look, this is against the rules on freedom of movement and freedom for persons and so on, which then the court in 2018, if I'm right, ruled already that indeed there is a violation on these rules. And Romania should give residence cards to the American husband. With five years later now, Romania still has not done it. This is, for instance, a very good grounds for the European Commission to start again an infringement procedure against Romania. For instance, again, the Commission is not doing that. So it's also kind of a conclusion that we need to make. If we need to pressure the Commission that much like we had to do with Hungary to actually act, there has to be so much international pressure, pressure from the member states and so on, on them for them to act. Yeah, we cannot stay doing that for every single case. **The Commission should just do that job and that job as being the guardian of the treaties. And there is a clear violation of EU law.** And yeah, I mean, there's a clear violation of the treaties by Romania in this case, but there are all the cases with Bulgaria, for instance, as well, where, I mean, just court rulings are not implemented. So the Commission should start an infringement procedure so Romania would get fines on this and so on. But that's things, I mean, about five years later, the Commission still has not done it. So instead of making empty strategies, I would recommend the Commission to actually do their job and do what they actually can do instead of coming with empty strategies.

V.M.: About maybe to come back on the Hungarian case because it's the farthest we've been and there are many things that are new with this case because it's the first time we blah blah blah and can you maybe remind or highlight what's new about this case? Is it like a is it a potential hope for further jurisprudence I mean...

R.B.: So basically you know that the law in Hungary is basically a propaganda law which looks a lot like the one that has been introduced in 2013 in Russia so it bans any kind of promotion and people and places where children could be so where the media and schools and bookshops and so on and so it's a lot of censorship basically so as you know in July 2021 the commission — July 2022 — the Commission announced that they would take the infringement procedure to the courts and where they basically said that they would start a pleading and submit it to the courts by the end of the year so then it took them some time, it took them five months basically after the press conference to then push the button and submit it...um but there they submitted it and from 13th of February this year basically um... the commission uh well the official procedure has started and member states now had since since uh.. since 13th of February, six weeks plus an extension of 10 days to decide whether they want to join the court case uh and support the commission and their pleading. So now 10 member states, Belgium, Luxembourg, Netherlands, Portugal, Ireland, Austria, Malta, Sweden, Spain...and I'm probably forgetting one now plus uh the European Parliament have decided to join intervention um already, they have two more days other countries have two more days basically to do the same um and it's a lot of first things that are happening in this uh as I was saying earlier and this is the first time ever that's uh that's that the European Commission takes a member state to court based on...their pleading based on article two of the treaty which is for the first time ever that human rights and the European Court will be discussed, actually um we have no clue what the judge will rule on this but, uh it's the very first time that this is happening uh for a lot of member states for instance, it's also the very first time that they actually join the European Commission in a court proceeding against another member state so for instance uh Ireland, Malta uh and so on...Austria as well has never joined before a court case against other member states. The same goes for the European Parliament it's the same it's first time ever, in their history, that the European Parliament joins a court case against a member state and so on... um so there's a lot of first things a lot of historic first steps I think in this case. And it is clearly showing that the rule of the European...well not the rule of the EU but like at least a big part of the European Union is being united says like this kind of Kremlin-inspired laws are just not welcome here

and in the European Union. It's a clear violation of the core European norms and values and it's actually showing what I've been saying earlier that we really need to enshrine these core norms and values of the European Union because, yeah, it's clearly showing that this time Hungary went two steps too far and that's a lot of EU members saying yeah we just don't want to deal anymore with this kind of countries. So to prevent this from happening in the future we need to have to have a treaty change and this court proceeding will be very important because it will basically rule that this kind of propaganda laws are against EU law, which will mean there's law from then on that we have jurisprudence basically say for the rest of the European Union — which does not only apply to Hungary but for the rest of the European Union — will prevent the future from having other propaganda laws. We know there is still a law pending in the Polish Parliament, we have one in the Romanian Parliament, we have one in the Croatian Parliament we actually have one which has been adopted in Lithuania and Lithuania um which is now going to be taken down by uh by the Lithuanian government though, but uh it's still in place it's not being used and the Lithuanian government is working on taking it down. So it's important for the rest of the European Union as well it's not just for Hungary it's important but it's important that we will have jurisprudence in the highest court of the European Union with the most punishing power as well. And in the European continent that we have this kind of law and that's also why we have been pursuing this avenue the most I think um because uh um yeah the European Court of Justice as I was saying, this is a court which has punishing power we could also and we actually are preparing a court case with our local partners and Hungary as well for the court of human rights. But yeah, I mean Hungary doesn't have the best track record of implementing court rulings of the of the court of human rights. I mean neither has Belgium neither has France...so...but it's different so it's a bit uh it's different with the court in Luxembourg because that one has a punishing power, I mean it's the fines can be between 100 000 and 5 million euros every single day that the law is in place still after the ruling so yeah the the punishing power of the court in Luxembourg is much higher of course.

V.M.: Um..well thank you. And maybe a last question because you mentioned uh well the Council of Europe or more like the European Court of Human Rights...Is it like a key actor in LGBTI rights in the EU because i've seen like there is commitment, there are many things and there are some cases some judgments that were made but well maybe as you said there is not the financial sanction that can be taken?

R.B.: No that's the main problem of course the Council of Europe is very committed and uh Dunja Mijatović, the commissioner for human rights, has been sending out statements every time every single time that something happens and whatever country on LGBTQ rights but again, **it's just statements and it's a good tool maybe to raise a little bit of attention with other member states** about what is happening in certain member states **but for us we don't see them as a key partner because of the influence that they actually have is very small.** And yeah there are of course also within the CoE, especially since Russia left, practical problems at a lot of the moments. Russia was a huge contributor to the Council of Europe financially, since they left — yeah there was no other option of course — but since it left the CoE has had also financial struggles to survive and to stay committed to stay doing the work that they should be doing. **So that's a problem that we have also with the CoE. So I think we should rethink a little bit also on how the CoE operates...um because you could ask yourself the question "what is still the value of the council of europe?"**, except for the fact that there are also a lot of member states which are not member of the EU in there. But yeah, that's it's uh it's not like most of the member states of the CoE also hope to become at some point member of the EU. So, there are also other tools to push these member states into doing ...uh trying to work more on democracy, on rule of law and human rights i think. The European external action service which is an EU institution then has been doing much more influence on these conflicts than what the CoE with them is doing, because at least, the external action service has influence over them because they say "you need to have a better working, more independent court system". Yeah they do it because they want to become member of the EU. And the CoE...it will have quite not so much impact I fear uh on these countries. So yeah, I value their work, but much more than raising awareness I don't think the CoE can do so.

V.M.: Well, okay! Um.. i was recording the the call we were having, is it fine if uh I quote your name during the interview?

R.B.: yes!

2 – Excerpt of a Letter sent by the Lublin voivodeship to the municipality of Końskowola

Retrieved in March 2023, from

<https://twitter.com/BartStaszewski/status/1634296557846642688>

trwałości.

Biorąc pod uwagę powyższe wymogi, w Programie Fundusze Europejskie dla Lubelskiego 2021-2027 (przyjętym przez Zarząd Województwa Lubelskiego Uchwałą nr CDXVII/7223/2022 z dnia 13 grudnia 2022 roku i zatwierdzonym przez Komisję Europejską decyzją wykonawczą nr C(2022)8382 z dnia 24 listopada 2022 roku; dalej: FEL 2021-2027) zawarto m.in. następującą klauzulę: „Fundusze polityki spójności będą przyznawane wyłącznie projektom i beneficjentom, którzy przestrzegają przepisów antydyskryminacyjnych, o których mowa w art. 9 ust. 3 Rozporządzenia PE i Rady nr 2021/1060. W przypadku, gdy beneficjentem jest jednostka samorządu terytorialnego (lub podmiot przez nią kontrolowany lub od niej zależny), która podjęła jakiegokolwiek działania dyskryminujące, sprzeczne z zasadami, o których mowa w art. 9 ust. 3 rozporządzenia nr 2021/1060, wsparcie w ramach polityki spójności nie może być

z beneficjentów jest Gmina Końskowola, zostaną pozbawione współfinansowana ze środków Unii Europejskiej?

W przypadku utrzymania brzmienia ww. stanowiska w sprawie wprowadzenia ideologii LGBT – Gmina Końskowola, utraci możliwość uzyskania dofinansowania i kwalifikowania wydatków, które planowała ponieść w projektach. Pozostali Partnerzy, w tym Lider – Miasto Puławy zachowują prawo do ubiegania się o dofinansowanie do projektów, za wyjątkiem projektów partnerskich, w których zakłada się realizację zadań wspólnie z Gminą Końskowola. JST, która stosuje ograniczenia dostępności lub zasady dyskryminujące w podejściu do interesariuszy i/lub użytkowników planowanego projektu, nie może być wnioskodawcą, a tym bardziej beneficjentem wsparcia ze środków Programu.

English Translation of the Excerpt

Considering the above requirements, the European Funds for Lublin Region 2021-2027 Program (adopted by the Resolution no. CDXVII/7223/2022 of the Management Board of the Lublin Voivodeship on December 13, 2022, and approved by the European Commission's Executive Decision no. C(2022)8382 of November 24, 2022; hereinafter referred to as the EFLR 2021-2027) includes the following clause: "Cohesion policy funds will only be awarded to projects and beneficiaries who comply with anti-discrimination regulations referred to in Article 9(3) of Regulation (EU) No 2021/1060. In the event that the beneficiary is a local government unit (or an entity controlled or dependent on it) that has taken any discriminatory action contrary to the principles referred to in Article 9(3) of Regulation No 2021/1060, support under the cohesion policy cannot be...

If the above position on the introduction of the LGBT ideology is maintained, the municipality of Końskowola will lose the possibility of obtaining funding and qualifying expenses that it planned to incur in projects. Other partners, including the Lead Partner - the city of Puławy, retain the right to apply for funding for projects, except for partner projects in which tasks are planned to be carried out jointly with the municipality of Końskowola. A local government unit that applies restrictions on accessibility or discriminatory principles in approaching stakeholders and/or users of the planned project cannot be an applicant, let alone a beneficiary of support from the Program funds.

3 –Tables and Figures

Table 1 - *Main ideas from MEPs’ speeches during the debate on the resolution declaring the EU an ‘LGBTIQ-freedom zone’ (European Parliament, 10 March 2021)*

The defenders	Those sitting on the fence	The reframers
Left, S&D, Greens, Renew	EPP	ECR, ID
<i>Direct criticism of Polish and Hungarian governments</i>	<i>Attachment to Christian-democrat values and to the family</i>	<i>Denial of LGBTI discriminations in Poland</i>
<i>Emphasis on freedom, equality, inclusion values</i>	<i>Protection of (LGBTIQ) children</i>	<i>LGBTI framed as “leftist ideology” and “propaganda” from Western Europe</i>
<i>Personal speeches (1st person)</i>	<i>Congratulating the action of the Commission</i>	<i>Protection of children and traditional marriage</i>
<i>Human rights framing</i>		<i>National sovereignty</i>
<i>Demanding more from the Commission</i>		<i>Blame on Islam and immigration (homonationalism)</i>

Table 2 – *Contribution to EPP’s “abstention” and “against” votes on the resolution declaring the EU as an LGBTIQ freedom zone, by category of origin of MEPs*

Category	Votes			
	<i>Abstention</i>		<i>Against</i>	
	Nb. of votes	(%)	Nb. of votes	(%)
<i>East</i>	15	68%	9	64%
<i>West</i>	7	32%	5	36%
	22	100%	14	100%

Fig. 1 - Voting Results on the adoption of the resolution declaring the EU an LGBTIQ-freedom zone

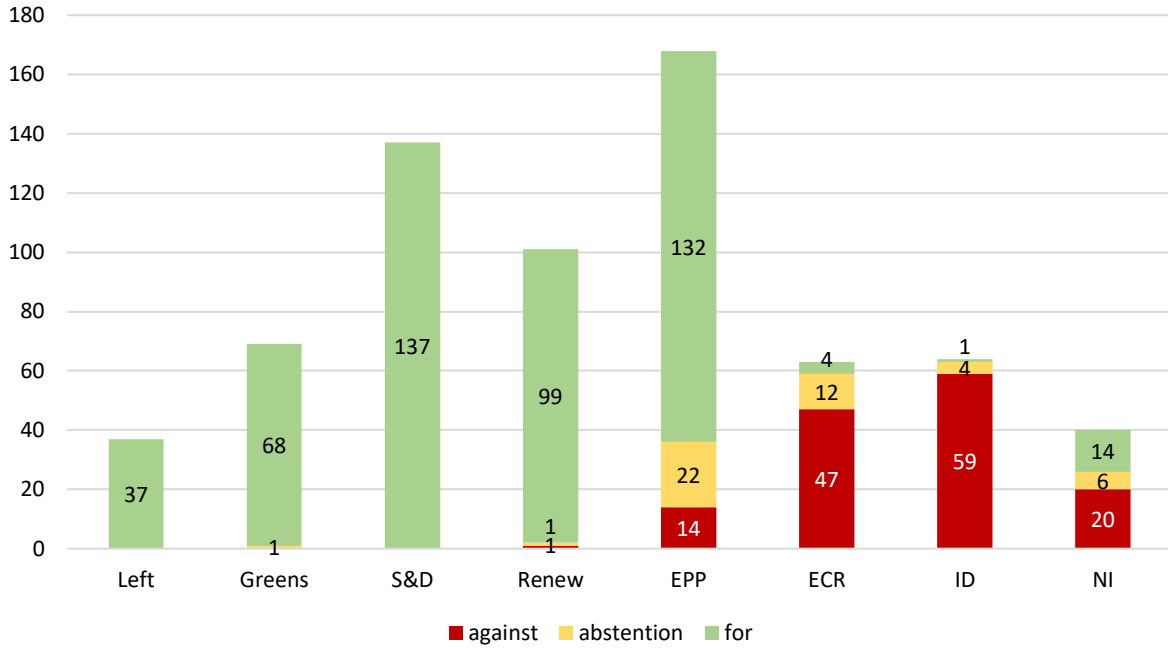


Fig. 2 - MEPs' LGBTI intergroup membership rate by country

