

EXPRESSION ABRIDGED

A LEGAL ANALYSIS OF ANTI-LGBT PROPAGANDA LAWS

EXECUTIVE SUMMARY

APRIL 2018



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ABOUT IGLYO

IGLYO - The International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex (LGBTQI) Youth & Student Organisation - is the largest LGBTQI youth and student network in the world with over 95 member organisations in over forty European countries.

As a youth development organisation, IGLYO builds the confidence, skills and experience of LGBTQI young people to become leaders within the LGBTQI and human rights sectors. Through cross-cultural exchange and peer learning, IGLYO also creates a powerful collective of youth activists across Europe and beyond, who can share strategies and visions, and foster values of international solidarity. Finally, IGLYO ensures the voices and experiences of LGBTQI young people are present and heard by decision-makers nationally and internationally.

IGLYO has produced this report to support the advocacy and communications work of activists who engage in fighting against LGBT anti-propaganda laws. It provides a strong argument against those who resort to using children's rights and national and cultural values to oppose LGBTQI supportive laws and policies."



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FOREWORD

The past decade ushered in a positive sea-change for LGBT rights. Marriage equality, adoption rights for same-sex couples, and workplace anti-discrimination policies have been widely introduced both through legislation and via the individual initiatives of multinational corporations. That's of course if we look at the world through Western eyes.

Despite this encouraging progress, in fact, same-sex relationships are still criminalised in more than 70 nations. In eight, homosexuality is punishable with the death penalty, and in more than half of the world's countries, LGBT people can legally be fired for who they are, who they love and how they look.

Young LGBT people are those who tend to suffer the most. Bullying remains a global issue, even in countries such as the USA and the UK. As a result, each year, up to a third of LGBT students decide to drop out from school. So, perhaps it is not a coincidence that 40% of homeless youth on the streets of major US cities are indeed LGBT people.

Sexual orientation and gender identity are inherent aspects of someone's self and should never lead to persecution, stigma and abuse. In the words of the UN, the fight against LGBT discrimination is in fact a 'development imperative', and the UN Sustainable Development Goals highlight multiple times the need of 'leaving no-one behind'.

Against this international framework, however, we are witnessing the rise of a number of anti-LGBT propaganda laws, legislative initiatives aimed at limiting the full participation of LGBT people in public life.

In the past five years, nine countries in Central and Eastern Europe, and Central Asia have tried to pass laws restricting the rights and wellbeing of LGBT people in the name of protecting children, upholding family values or defending national identities. In some cases, notably, Russia, they have succeeded, ushering in a crackdown on LGBT activists, restricting people from gathering, and legitimising homophobic behaviours - including violence - across societies.

This research looks at various legislations aimed at banning LGBT 'propaganda', both enacted or proposed, in countries such as Belarus, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Russia and Ukraine. Crucially, the report exposes the legal contradictions between the anti-propaganda laws and national and international

legislation defending freedom of speech and access to information among many other rights. It is a compelling read and a powerful tool that can be used by activists and NGOs defending human rights across the world.

We applaud IGLYO, and our TrustLaw law firm partners for leading this excellent work. It is particularly refreshing to see how this seminal work has been spearheaded by the bold initiative of the world's largest LGBTQI youth and student network.

At the Thomson Reuters Foundation, we believe that socio-economic progress and the rule of law should benefit everyone. Laws which limit the full participation of LGBT people in society endanger global progress and have undeniably negative impact on communities and economic development.

LGBT rights are human rights. And human rights are for everyone, no matter who you are, no matter where you live, and no matter who you love.

A handwritten signature in black ink that reads "Antonio Zappulla". The signature is written in a cursive, flowing style.

Antonio Zappulla

Chief Operating Officer

Thomson Reuters Foundation



INTRODUCTION

'I don't know how to live here, I am writing to ask for help. When I was 12, I told my mom I am in love with a girl in my class. It was the most stupid thing in my life. There have been ongoing scandals. I hear constant humiliation from the parents. I cut my hands, I smash my fists against the wall...'

This is Nikita, a 16 year old girl from a small town in Russia. A few years ago she had a narrow opportunity to ask for help from people who could understand what she was going through.

Lena Klimova is a Russian journalist who received an email from a 15-year-old girl who said that she was being bullied by her classmates and her parents because she was gay. Klimova set up an online survey to collect more information and received over a hundred e-mail responses, which convinced her to create an online support project for LGBT young people, entitled Children 404. The number '404' in the project title refers to the internet error message: Error 404 – Page Not Found.

In January 2014, Elena Klimova was charged under a Russian federal law criminalising the distribution of 'propaganda' of 'non-traditional sexual relationships' among minors. On 21 February 2014, the charges were dropped after the court ruled in consultation with a mental health professional that the page 'helps teenagers exploring their sexuality to deal with difficult emotional issues and other problems that they may encounter', and did not constitute 'propaganda' under the law. In January 2015, Klimova was, again, charged with violating the propaganda law for operating Children 404, facing a fine of 50,000 rubles. The charges were dropped by the court after an appeal. However, in July 2015, Klimova was charged once more and convicted by the same court for violating the law, facing the same fine.

Klimova said: 'What does the state offer these teenagers at the moment? The answer is obvious: nothing'. Not only does the state not offer anything to young people whose sexual orientation, gender identity and/or sexual expression differs from the majority (also referred to in this report as the young 'LGBT' community) but it also passed a piece of legislation that is effectively used to shut down services that seek to support them.

In 2014, the Lithuanian publisher of 'A Heart of Amber' ('Gintarinė širdis'), a children's fairytale book featuring two stories with gay protagonists, removed the book from circulation on the grounds of an opinion given by the Inspector of Journalist Ethics. This action was based on The Lithuanian Law on the Protection of Minors against the Detrimental Effect of Public

Information, which prohibits the dissemination of public information which 'expresses contempt for family values', or encourages the entry into marriage and creation of a family of any type other than that recognised in the Constitution.

These are just two of the many unfortunate examples of what has happened, and can still happen, as a result of the so-called anti-LGBT propaganda laws. Nine countries in Central, Eastern Europe and Central Asia have attempted (and some have succeeded) to pass legislation which claims to protect children from exposure to information that can harm their well-being and development. In the vast majority of these contexts, however, the type of information which was deemed to be harmful has to do with diversity of sexual orientation. In other words, lawmakers and authorities have been passing laws to control, to varying degrees, access of LGBT young people to the enjoyment and fulfilment of their human rights. Both the adoption of such laws and the process of trying to pass them have had negative impacts on the rights and wellbeing of LGBT people. Even when the proponents of the laws were not successful in passing them, the process itself made room for negative and demeaning discourse and brought to the public arena arguments and messages that have to do less with legal aspects and more with personal and group values. In practice, the impact of such processes have included restricting people from gathering, organising and taking part in public or community events, from putting out much needed information on mental and sexual health, from accessing and offering psychological and emotional support services, and, even more simply, from getting connected and becoming part of communities. Initiatives are banned, information is censored and vulnerable young people are left in isolation without any level of support.

The truth of the matter is that anti-LGBT propaganda laws are used to further discrimination, with stigmatising effects on LGBT people, mostly under the pretext of protecting the wellbeing and healthy development of children. This report aims to provide a thorough analysis of legal arguments in support of passing such laws and whether they come into conflict with other national legislation and international treaties and conventions to which these countries are party. In addition to looking at the legal justification of these laws, the report investigates how the anti-propaganda laws have been enforced, how children's rights are protected under domestic laws and if the anti-LGBT propaganda laws are in breach of children's rights under national and international legislation. The report also explores how the notion of family is defined in domestic laws, since adherence to family and traditional values is one of the fundamental arguments used to advance anti-LGBT propaganda legislation.

The research is invaluable, not only because it clearly shows the legal contradictions between the anti-LGBT propaganda laws and national and international legislation, but also because it points out the possible loopholes or weaknesses in the laws that proponents might use to argue in favour of their drafts. Often, international treaties and covenants include specific restrictions on their conditions that states can apply in specific circumstances. Proponents of anti-LGBT propaganda laws do use such restrictions, but this report clearly describes why many of these arguments cannot and should not be used in the context of passing legislation that restricts the rights of all citizens,

including children, to access correct and relevant information and to freedom of expression, among others. In this way and in many others, the report will help support human rights NGOs in Europe, Central Asia, and beyond to fight against these propaganda laws and to challenge the growing discourse around traditional gender and family roles.

'It is very difficult to talk about non-discrimination, equality, the rule of law and justice in Belarus. We need to consider the fact that Belarus is a dictatorship. Belarus is the only country in Europe which is not a member of the Council of Europe. All the efforts of Belarusian LGBT movement until 2017 did not bring any positive changes in the legal field. It is an impossible task. Recently Belarusian LGBT initiatives prefer to lead more informational and educational work with civil society, journalists, youth, arts workers, teachers, doctors, and other groups.'

– Siarhei Androsenka, Member of the Board of NGO 'Belarusian in Sweden'

'In countries like Kyrgyzstan international human rights mechanisms are ignored and attacked. According to the new Constitution the national legislation is above international human rights law. This means that activists should refocus their advocacy to existing national mechanisms, awareness building and public campaigns.'

– Dastan Kasmamytov, young activist from Kyrgyzstan

'The Law on the Protection of Minors against the Detrimental Effect of Public Information has been applied on three different occasions with the view of censoring LGBT related public information. The Lithuanian authorities claim that this discriminatory interference with the right to freedom of expression is necessary to protect the 'emotional, spiritual, psychological development and health of the minors', thus creating a chilling effect on talking publicly about LGBT* issues in Lithuanian society. The application of this law with the view of censoring LGBT* related public information has caused a chilling effect among the online media outlets, as they have started branding news items pertaining to LGBT* issues as suitable only for adults. It can be concluded that the limited positive information about LGBT* issues in the public sphere further reinforces a socially hostile atmosphere for LGBT* people in Lithuania.'*

– Eglė Kuktoraitė, Lithuanian Gay League



EXECUTIVE SUMMARY

BACKGROUND ON THE PROPAGANDA LEGISLATION

This report reviews pieces of current or proposed legislation in a number of jurisdictions that fall under the umbrella term ‘Propaganda Legislation’. These are summarised below by jurisdiction.

Russia

The Russian federal law ‘for the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values’ was unanimously approved by the State Duma on 11 June 2013 and signed into law on 30 June 2013 by President Vladimir Putin (the ‘**Russian Legislation**’).¹ The Russian Legislation makes it illegal to distribute amongst minors ‘*propaganda*’ that supports ‘*non-traditional*’ sexual relationships. Breaching the Russian Legislation is punishable by the imposition of a fine in respect of individuals and an order to cease operations in respect of organisations. In addition, if a ‘*foreigner*’ breaches the Russian Legislation, that person may be (i) detained for up to 15 days and then deported, or (ii) fined and deported.² The explanatory note to the Russian Legislation ‘explains’ that the law was considered ‘*necessary to protect the younger generation from the effects of homosexual propaganda*’.³ A number of Russian provinces have introduced similar legislation, for example, in Ryazan Oblast it is an offence to engage in ‘*public actions aimed at propaganda of homosexuality... among minors*’;⁴ in Arkhangelsk the ‘*public actions aimed at homosexual propaganda towards minors*’ are prohibited; and in St Petersburg, the ‘*propaganda of (or public activities promoting) sodomy, lesbianism, bisexuality, trans-genderism and paedophilia to minors*’ is banned as well as ‘*forming in a child’s mind a distorted perception of social equality of traditional and non-traditional marital relationships*’.⁵ The Russian Constitutional Court held that the Russian Legislation only prohibits the direct promotion of homosexual relations (rather than information which is neutral in tone).⁶

Following the enactment of the Russian legislation, several countries have proposed bills or enacted legislations that mirror its terms, and similarly aim to ban the promotion of same-sex relationships and LGBT-related information.

1 OMICS International, ‘*Russian LGBT propaganda law*’ (http://research.omicsgroup.org/index.php/Russian_LGBT_propaganda_law)

2 *Ibid.*

3 Quoted in Amnesty International, ‘*The Anti-Elton John Propaganda Law*’, 22 January 2014 (<https://www.amnesty.org.uk/blogs/campaigns/russia-putin-gay-rights-law-lgbt-sochi-olympics-elton-john>)

4 Page 28, Article 19, ‘*Traditional values? Attempts to censor sexuality*’, 2013 report (<https://www.article19.org/data/files/medialibrary/3637/LGBT-propaganda-report-ENGLISH.pdf>)

5 Page 28 and footnote 92, *Ibid.*

6 Page 28, *Ibid.*

Belarus

The Belarus propaganda bill ('Bill on the Protection of Children from Information Harmful to their Health and Development') (the '**Belarus Bill**') was due to take effect in July 2017.⁷ While it does not specifically refer to information relating to sexual orientation or gender identity, it seems to be an export of similar anti-LGBT propaganda legislation passed in Russia. The Belarus Bill prohibits information which 'discredits the institution of family and marriage' to child, but leaves such information undefined – this means the scope of interpretation by the authorities is potentially very wide.

Kazakhstan

The proposed Kazakhstan legislation (the 'Law on the Protection of Children from Information Harming their Health and Development' (the '**Kazakhstan Legislation**')) is understood to be similar in nature to the Russian Legislation although the text of the Kazakhstan Legislation has not been made available to the public.⁸ Initially, in May 2015, the Kazakhstan Legislation was rejected by Kyrgyzstan's Constitutional Council (the '**Council**') because of its vague wording and the Council therefore deemed the Kazakhstan Legislation to be unconstitutional.⁹ It is unclear whether the Kazakhstan Legislation may be revised or revived.

Kyrgyzstan¹⁰

The proposed Kyrgyzstan legislation which is still being considered by Kyrgyzstan's parliament (the '**Kyrgyzstan Legislation**') is broader and more encompassing than the legislation which is proposed to be adopted in other countries.¹¹ For instance, under the Kyrgyzstan Legislation, expressing sentiments (via the internet, telecommunications, or the media)¹² which could amount to '*a positive attitude to unconventional sexual orientation*'¹³ may result in harsher punishments than the Propaganda Legislation in other countries.

Latvia

In 2013 the Latvian Central Election Commission failed to enact the draft law 'Amendments to the Protection of the Rights of the Child Law', which aimed to prohibit children as participants or spectators of events aimed at the promotion of LGBT relations. However, in 2015, the Latvian parliament (the Saeima) passed amendments to the Education Law which obliges education institutions to provide students with 'moral' education that mirrors constitutional values, especially regarding marriage and family. Further, they are obliged to protect students from information that does not promote 'moral' development. As the Latvian constitution defines

7 As of 1 March 2018, no updates as to whether the Belarus Bill is now effective could be found.

8 <https://www.hrw.org/news/2015/07/30/olympics-and-gay-propaganda-kazakhstan>

9 <https://www.hrw.org/news/2015/05/28/kazakhstan-anti-gay-laws-found-unconstitutional>

10 For an overview of the proposed legislation see: 'Kyrgyzstan: Withdraw Draconian Homophobic Bill' (<https://www.hrw.org/news/2014/03/27/kyrgyzstan-withdraw-draconian-homophobic-bill>)

11 'Bad news: Kyrgyzstan, Morocco, Egypt, Nigeria, more' (<http://76crimes.com/2015/07/16/bad-news-kyrgyzstan-morocco-egypt-nigeria-more/>)

12 'Russian-Style 'Gay Propaganda' Law Introduced In Kyrgyzstan' (<http://www.buzzfeed.com/lesterfeder/russian-style-gay-propaganda-law-introduced-in-kyrgyzstan#.rjkVRYoGM>)

13 'LGBT Voices for Equality: Kyrgyzstan' (<http://www.humanrightsfirst.org/blog/lgbt-voices-equality-kyrgyzstan>)

'marriage' as only between a man and a woman, in effect this amendment has been viewed as mirroring the Russian law banning 'LGBT propaganda'.

Lithuania

In 2009, Lithuania proposed legislation entitled the 'law on the protection of minors against the detrimental effect of public information' which would have forbidden the '*propaganda of homosexual, bisexual or polygamous relations*' to minors (the '**Lithuanian Legislation**'). In response, the European Parliament passed a resolution of protest.¹⁴ Whilst the explicit homophobic language was subsequently removed from the proposed Lithuanian Legislation, the law still refers to the '*traditional family model*'.¹⁵

Moldova

In July 2013, an 'anti-propaganda' law inspired by the Russian legislation was enacted under Moldova's Contravention Code, banning the 'distribution of information aimed at propaganda of... any other relations than those related to marriage of family'. This legislation was repealed by the Parliament in October 2013.

However as of June 2016, Moldova was set to re-instate a law banning 'homosexual propaganda'.¹⁶ The bill proposed mirrors the Russian legislation and has already received approval from the Culture and Education Committee. It is now before the Moldovan Parliament, and it remains to be seen whether the bill will be passed. If passed, the bill would impose fines for spreading 'homosexual propaganda' to minors via the internet, the media and public meetings.

Poland

In March 2017, draft propaganda legislation was proposed to ban homosexual people from the teaching profession. The proposed bill was never voted on due to a change in the party compositions of the Polish parliament following new elections.

However due to the significant influence of the Catholic Church in Poland, its conservative views still retain a degree of impact on law-making and public opinion. There have been several attempts by the authorities to ban LGBT parades and events, although these were allowed to proceed after courts held the ban unconstitutional.

Ukraine

In 2012, two draft bills aimed at protecting children from 'homosexual propaganda' were submitted to the parliament for consideration (the '**Propaganda Bill**'). These drafts prohibited information which 'promoted homosexuality' and specifically banned activities such as rallies, parades and other mass gatherings aimed at disseminating any positive information about same-sex relationships. The

¹⁴ Amnesty International, 'Latvia and Lithuania: human rights on the march?' (<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwjxufvP1fPQAUE24MKHfvqB90QFggMAM&url=https%3A%2F%2Fwww.amnesty.org%2Fdownload%2Fdocuments%2F56000%2Feur530012008eng.pdf&usq=AFQjCNHPNGF9hzTXGoPenVRYiBuzNqeCrg&bvm=bv.141536425,bs.2,d.eWE>)

¹⁵ 'Perspective: what has the EU done for LGBT rights?' (<http://www.cafebabel.co.uk/society/article/perspective-what-has-the-eu-done-for-lgbt-rights.html>)

¹⁶ As of 1 March 2018, no updates as to whether this bill is now effective could be found.

proposed Propaganda Bill had enjoyed wide backing from all major political parties and the public at the time, and was due to move for a second round of reading in the Ukrainian parliament. However, in the wake of international criticism, it was removed from parliamentary consideration in 2014.

Despite the Bill's removal, a report from the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) in 2015 asserts that propaganda laws are still strongly mooted in Ukraine.

REVIEW OF RELEVANT PROVISIONS IN INTERNATIONAL TREATIES

Among other items, this report examines three international treaties with relevance to the jurisdictions and freedoms impacted by the propaganda laws. The analysis of these three – the International Covenant on Civil and Political Rights (the 'ICCPR'), the European Convention on Human Rights (the 'ECHR'), and the UN Convention on the Rights of the Child (the 'UNCRC') – is summarised below in the context of the propaganda laws.

International Covenant on Civil and Political Rights (the 'ICCPR')

The ICCPR, a treaty adopted by the United Nations General Assembly in 1966, took effect in 1976.¹⁷ The signatories to the ICCPR have agreed to protect certain '*inalienable*' civil rights and recognise that this can only be achieved if the right environment is created.¹⁸ These freedoms include prohibitions against slavery¹⁹ and torture,²⁰ equality before the judicial courts,²¹ and the right to liberty.²² In particular, in the context of the Propaganda Legislation, the ICCPR is a key instrument for establishing fundamental rights including: (i) the prohibition of discrimination on grounds of a personal characteristic, (ii) protecting an individual's right to freedom of expression ('**FoE**'), and (iii) protecting an individual's right to freedom of association ('**FoA**') and (iv) the protection of children and prohibition of discrimination on grounds of a personal characteristic.

The rights of FoE and FoA are included under A.19 ICCPR and A.22 ICCPR, and the restrictions under these articles have been discussed and explained in the Siracusa principles (the '**Siracusa Principles**').²³ The Siracusa Principles expand upon the above tests and explain that in order for a restriction to (i) be provided by law²⁴ and (ii) be necessary,²⁵ the restriction must (a) be based on one of the justification grounds recognised by the relevant article of the ICCPR, (b) respond to a pressing public or social need, (c) pursue a legitimate aim, and (d) be proportionate to that aim.

¹⁷ International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49 (<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>)

¹⁸ Preamble, *Ibid.*

¹⁹ Article 8, *Ibid.*

²⁰ Article 7, *Ibid.*

²¹ Article 14, *Ibid.*

²² Article 9, *Ibid.*

²³ American Association for the International Commission of Jurists, '*Siracusa Principles on the Limitation and Derogation in the International Covenant on Civil and Political Rights*' (<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>)

²⁴ Article 19(3), Note xv

²⁵ *Ibid.*

Any assessment as to the necessity of a restriction must be made on an objective basis²⁶ and the 'heavy'²⁷ burden of proof is on the State to prove that the restriction is necessary.²⁸

This report concludes through a number of examples that the propaganda laws as they currently stand fail to pass the tests of the Siracusa Principles, and as such fail the test of legality under A.19 or A.22 of the ICCPR.

The Convention for the Protection of Human Rights and Fundamental Freedoms (the 'ECHR')

The ECHR was the first convention to give effect to and make binding some of the rights included in the Universal Declaration of Human Rights. The ECHR was designed with the aim of protecting human rights and fundamental freedoms in order to achieve greater international unity and came into force in 1953.²⁹ The ECHR contains certain fundamental freedoms, including the following which are of particular interest in the context of the Propaganda Legislation.

First, A.14 ECHR (and Protocol 12 to the ECHR) provide that individuals have a right to equal treatment in respect of their other rights which are set out in the ECHR.³⁰ This A.14 right is not autonomous but has effect only in relation to other ECHR rights (this provision complements the application or engagement of the other Articles and Protocols under the Convention).³¹ Under A.14 ECHR, an individual has the right to enjoy their right to FoE and FoA regardless of their sex, political or other opinion, association with a national minority or other status (among others). As demonstrated in this report, those States which have introduced the Propaganda Legislation breach FoE and FoA under the ECHR.

Second, pursuant to A.13 ECHR, individuals have a right to an effective remedy in the event that a State has violated the provisions of the ECHR.

Third, A.10 ECHR protects FoE (including freedom to hold opinions and to receive and impart information and ideas without interference by public authority).³² Also, A.11 ECHR protects citizens' FoA, including their freedom of assembly.³³ The ECHR recognises that these rights are not absolute and that they may be restricted or subject to certain conditions or penalties (such discretion between states being called the so-called 'margin of appreciation'). As with the ICCPR, any restrictions from A.10 and A.11 ECHR are subject to compliance with a strict test. Any restrictions under these provisions of the ECHR must be: (i) prescribed by law, (ii) necessary in a democratic society, and (iii) designed to pursue one of a set number of legitimate aims (as stated in an exhaustive list in the text of the ECHR), for instance, to prevent disorder or crime or for the protection of health or morals.^{34,35}

²⁶ Paragraph 10, Part I, Note xxxvii

²⁷ Page 123, Note xxix

²⁸ Paragraph 12, Part I, Note xxxvii

²⁹ Gani, A. 'What is the European convention on human rights?', The Guardian, 3 October 2014 (<https://www.theguardian.com/law/2014/oct/03/what-is-european-convention-on-human-rights-echr>)

³⁰ Article 14, European Convention on Human Rights

³¹ Van Raalte v. the Netherlands, 21 February 1997, § 33, Reports 1997-I, and Gaygusuz v. Austria, 16 September 1996, § 36, Reports 1996-IV

³² Article 10(1), Note xcvi

³³ Article 11, Note xcvi

³⁴ Article 10(2), Note xcvi

³⁵ Article 11(2), Note xcvi

Whilst this analysis is similar to the above ICCPR provisions, the judicial interpretations and wording of the relevant legislation differ slightly.

The European Commission for Democracy through Law (better known as the Venice Commission) (the 'VC'),³⁶ whose role is to provide legal services to the European Commissions' member states and to assist such member states in their compliance with the relevant legislation,³⁷ has reviewed the Propaganda Legislation in relation to the legislation implemented in the Republic of Moldova, Russia and Ukraine³⁸ in the context of the ECHR and, as based on the tripartite test set out above in relation to A.10 ECHR, concluded that this would not constitute a legitimate restriction on the rights of FoE.³⁹ The full version of this report examines in detail the claims of the VC in context of the tripartite test.

United Nations Convention on the Rights of the Child (the 'UNCRC')

The UNCRC is a widely adopted treaty that includes a number of provisions relevant to the FoE and FoA of children.⁴⁰ The UNCRC, provides for:

- Children to be protected from all forms of discrimination (Article 2);⁴¹
- The right to freedom of expression including a freedom to seek, receive and impart information and ideas of all kinds (subject to the protection of public morals among other things) (Article 13);⁴²
- Right to freedom of thought and the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right (Article 14);⁴³
- Right to freedom of association and peaceful assembly (Article 15);⁴⁴ and
- Right to 'access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.' (Article 17).⁴⁵

Under the Propaganda Bill, children would be restricted from accessing or requesting information/materials/guidance, in particular, relating to sexuality, which in turn would restrict their rights

36 Para 20 of the Opinion on the issue of the prohibition of so-called '*Propaganda Of Homosexuality*' in the light of recent legislation in some member states of the Council of Europe adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013) on the basis of comments by Ms Finola Flanagan (Member, Ireland) Mr Jan Velaers (Member, Belgium) Mr Vladimir Djerić (Expert, Serbia) ([http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)022-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)022-e))

37 The Venice Commission of the Council of Europe: http://www.venice.coe.int/WebForms/pages/?p=01_Presentation

38 §1, Note ciii

39 Note, the summary analysis differs slightly from the order in which the VC sets out its reasoning in the Opinion

40 Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with Article 49 (<https://treaties.un.org/doc/Publication/UNTS/Volume%201577/v1577.pdf>)

41 Article 2, *Ibid.*

42 Article 13, *Ibid.*

43 Article 14, *Ibid.*

44 Article 15, *Ibid.*

45 Article 17, *Ibid.*

under Articles 13-17 of the UNCRC. A child's right to receive and impart information relating to sexuality has been specifically endorsed by the Committee on the Rights of the Child through various publications, which is discussed in further detail in the full report.

BEST PRACTICE DOMESTIC LEGISLATION THAT PROTECTS LGBTQ EXPRESSION AND CULTURE

A number of countries around the world have adopted various legislative and practical steps which protect LGBT expression and culture. The report explores a number of these measures, and the key areas are summarised below as numbered recommendations.

First recommendation: the relevant legislation/constitution should ideally include specific provisions which prohibit discrimination on the grounds of a person's sexual orientation, or gender identity or expression, not only so that it is not left to the judiciary to determine whether such rights are protected (and prohibiting later judicial decisions to change such analysis) but also to ensure that the legislation is drafted with sufficient clarity to cover all applicable characteristics.

Second recommendation: States should define, with sufficient precision, the personal characteristics which are intended to be covered by the relevant anti-discrimination legislation.

Third recommendation: States should introduce an equality body which has authority over all aspect of public and private life relating to LGBT persons which polices and enforces the domestic legislation in this regard.

SUMMARY OF THE RESEARCH REPORT

This report discusses in further detail the various legislations aimed at banning LGBT 'propaganda' to minors which have been enacted or proposed in Belarus, Kyrgyzstan, Kazakhstan, Latvia, Lithuania, Moldova, Poland, Russia and Ukraine.

The report also summarises in greater detail the decisions of the European Court of Human Rights and the UN Human Rights Committee on the relevant propaganda legislations and considers whether such restriction is legal or necessary. In contrast, it also highlights examples of legislations around the world which in fact protect LGBTQ expression and culture.

Parties interested in obtaining the full text of the report are encouraged to contact the Thomson Reuters Foundation (<http://www.trust.org>) or IGLYO (<http://www.iglyo.com/>).
