

# LGBTI rights in Poland

Measures to combat discrimination  
and violence on grounds of sexual  
orientation, gender identity and sex  
characteristics

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## Executive summary

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**As for the Right to Life, Security and Protection from Violence,** neither the Criminal Code nor any other law explicitly requires penalty enhancements for crimes motivated by anti-LGBTI bias. Hate speech based on SOGIESC still has not been recognized in Polish legal framework. Data and evidence gathered by the NGOs clearly shows that the current law does not adequately address the problem of LGBTI-phobia. Even though, some official figures are published, they contain only a handful of cases per year. Police, prosecution services and courts use different methods of recording of hate crimes, resulting in differences in numbers and cases 'disappearing' on the way through the criminal justice system. Moreover, most police officers and some prosecutors have received only basic hate crime training. Some training on anti-LGBTI hate crime are still provided by NGOs, however on an irregular basis. It is also worrying that there is no obligation to conduct the individual needs assessment of victims of hate crime or victims who are vulnerable because of their SOGIESC. Gathered information proves that the Victims' Rights Directive's guarantees for hate crime victims have not been implemented. There are also no systematic solutions addressing the situation of LGBTI people in prisons. Actions to improve safety and well-being of LGBTI prisoners are taken on an individual basis and do not have systemic character. Also, there have been no campaigns raising awareness of anti-LGBTI hate crimes organized by public authorities.

**As for the Freedom of Association,** organizations acting for the benefit of LGBT persons can register on an equal footing with other organizations. Theoretically, the legal provisions also allow public financing of activities of all NGOs without discrimination. However, since the election in 2015 and formation of Law and Justice government, the situation deteriorated, and the distribution of most public funds is now controlled directly by the government authorities. What is also worrying is the current approach of the authorities towards cooperation with LGBT NGOs. Until 2015 LGBT organizations were sometimes involved in the development and implementation of public policies, including consultations on legal measures that could have an impact on the human rights of LGBT persons. Since the general election in 2015, this involvement has come to an end. Also the use of the instrument of public consultations was significantly limited after 2015. On the national level only the Commissioner the Human Rights and liberal opposition parties are open to collaboration. More comprehensive and fruitful cooperation between LGBT NGOs and authorities exists on the local level, in cases when the local authorities are not connected directly or indirectly with Law and Justice party. LGBT organizations are also in a permanent contact with media representatives dedicated to LGBTI issues. Information on the activities of these organizations appears regularly in the mainstream press in the country. As for LGBT human rights defenders, they do not receive any special protection from the state against hostility and aggression. They can only rely on general provisions contained in acts of national law. In practice, state involvement in the protection of LGBT activists is focused mainly on securing equality marches.

**As for the Freedom of Expression and Peaceful Assembly**, there are no special provisions regarding protection of these freedoms in reference to LGBT persons. It is possible to seek, distribute and receive impart information on subjects dealing with sexual orientation, gender identity and gender expression issues. However, this flow of information is stimulated mostly by the LGBTI community and NGOs acting on benefit of this community and does not receive any substantial support from the state. Since 2015 there was no campaign in public media on LGBTI human rights. The freedom of expression in Polish legal system is limited by both civil and criminal law. The shape of these limitations stays in line with the current international standards. Nevertheless, only recently some of these provisions (for instance prohibiting 'slandering Polish state symbols') started being used in arbitrary way against LGBT activists which can result in causing 'chilling effect'. As for the constitutional freedom of peaceful assembly, this can be exercised by all people with full legal capacity residing in Poland. There are no special provisions securing exercising of this freedom in the context of minorities or groups at risk of discrimination. However, new restrictions regarding colliding assemblies and 'cyclical assemblies' adopted in 2017 can potentially restrict individuals' ability to hold counter-demonstrations and spontaneous demonstrations. The protection of peaceful demonstrations by the Police in favour of the human rights of LGBTI persons has to be assessed positively. However, the Police is still criticized by the NGOs for not intervening when the actions of counter-demonstrators are not a direct physical threat, but take a form of hate speech, slandering or hateful banners.

**As for the Right for Respect of Personal and Family life**, persons living in same-sex relationships - in theory - are legally considered as cohabiting in the context of criminal law. In practice, they are not always informed of the rights arising from obtaining this status (for instance the right to refuse to testify against their partner during the trial). Legal gender recognition procedure is available; however it is far from being quick, transparent and accessible. Current procedure does not rely on self-determination and requires psychiatric diagnosis. Irreversible sterilization is not required for gender recognition procedure. Also a person who has completed a legal gender procedure can marry a person of the opposite gender (to their new legal gender). The current situation proves that the legal gender recognition requires urgent regulation in a form of legislation. Even though, the act simplifying the gender recognition process was adopted by the Parliament it was vetoed by the President in 2015. As a matter of principle, Polish legal system does not regulate the rights and obligations of unmarried couples, including same-sex unions. While rights of same-sex partners have been asserted in some court cases, the legal protection of same sex-partners still remains full of holes. Also, Polish law does not provide the institution of registered partnerships. Moreover, national legislation does not recognize such partnerships even when they were concluded abroad. Current socio-legal situation of same-sex couples proves that it also requires urgent regulation in a form of legislation. The proposals to legally recognize same-sex unions have been submitted in the Parliament for the past 15 years, to no avail. As for the parenting issues, it needs to be

mentioned that negative opinions on non-heterosexual sexual orientation or transgender identity of the parent are sometimes used in courts as an argument against custody over a child. Only the married couples and single persons have the right to adopt a child. In practice marriages are preferred. Theoretically, lesbian couples and single women have access to medically assisted procreation. In practice, since the adoption of a new legislation in 2015, IVF clinics has been refusing the right to use their services for lesbian couples and single women.

**As for the Employment**, this area seems to be the only one where the protection against discrimination based on sexual orientation and gender identity is legally ensured. In case of sexual orientation this protection can be interpreted directly from legal provisions. In case of gender identity this protection is indirect (unequal treatment based on gender identity is treated in the jurisprudence as a discrimination on the grounds of sex). However, what weakens this protection is the fact, that specific LGBT groups (lesbian and bisexual women, persons of color or ethnic minority backgrounds or persons with disabilities) are not protected in a special way due to the greater risk of experiencing discrimination. Even though the legal framework protecting against discrimination of LGBT employees should be assessed positively, the research conducted by the NGOs show that employees rarely take legal action on the grounds of being discriminated against in the area of employment. Among other factors, the fear of disclosing sexual orientation or gender identity plays a significant role.

**As for the Education**, discrimination and violence based on sexual orientation, gender identity and gender expression are widespread in Polish schools. There have been cases of suicides of children who were victims of anti-LGBT bullying. Few LGBT students and teachers come out due to fear of becoming targeted. Legislative and policy solutions aimed at preventing and responding to homophobia and transphobia in education are lacking. There is also no government leadership to make schools and universities safe for LGBT students and staff. Moreover, anti-discrimination training is absent from standard specialized professional education for teachers. Such training or support and teaching aids are provided occasionally by NGOs. Also, school policies and action plans rarely consider equality and safety of LGBT students and staff. Only few schools and universities developed anti-discrimination standards in cooperation with NGOs. Such cooperation, as well as some initiatives in education to support diversity and respect for LGBT people are often meet with hostility from local communities, conservative NGOs and right-wing media. There have been cases of persecution of students and teachers who were involved in an anti-discrimination projects. It also needs to be mentioned, that objective information about sexual orientation, gender identity or expression and sex characteristics is rarely included in school curricula. Respect for the self-determined name and gender marker of pupils and students depends on the school. Positive initiatives in education aimed at supporting diversity and respect for LGBT people are still possible, however only as an effect of personal commitment of select education professionals rather than systematic efforts.

**As for the Health,** there are no specific measures undertaken to ensure the access to the highest attainable standard of health for LGBTI patients. The health of LGBT people is not included in any equality policies. There is a dearth of information regarding reported cases and the overall scale of discrimination against LGBTI people in access to healthcare. Also, there is no record of any programs or services addressed directly to LGB persons. LGBTI issues are absent from the national health plans, health surveys, suicide prevention programmes, medical training programmes, training courses and materials. Several cases of discrimination in access to prescription medicines for transgender people due to their gender expression or gender markers in the personal number have been registered by NGOs. Moreover, sexual orientation, gender identity and sex characteristics are not covered by the anti-discrimination laws with regard to access to health services. However, LGBTI patients can identify their “next of kin” in writing in order for the partner to be able to receive information about their state of health and get access to their medical documentation. Even though, homosexuality has been removed from the national classification of diseases, the treatments aimed at “curing” homosexuality have not been banned and sometimes are supported by the government. There is also no regulation guaranteeing effective access to appropriate medical services for transgender persons. Thus, most of medical surveys and diagnostic testing take place in the private sector. There are also no standardized requirements of transgender diagnostic testing, as well as regulations guaranteeing covering the costs of gender reassignment are missing. As for the legal guarantees for the intersex children, there are no measures explicitly prohibiting so-called ‘normalizing surgery’ treatments or limiting unnecessary procedures in early age. Also, the government considers this practice as legal. As a result of the current situation NGOs still receive reports on cases of the so-called normalizing surgery conducted on new-born babies.

**As for the Housing,** there is no legislation that explicitly prohibits discrimination based on sexual orientation or gender identity regarding access to adequate housing. Public housing services are in range of communes’ own tasks. Each municipality must adopt resolutions regarding, inter alia, the criteria for selecting tenants. There are no known resolutions in which the criteria would directly refer to sexual orientation or gender identity. There are also no known cases of direct discrimination against LGBT persons in access to community or social housing. Families of deceased tenant are legally protected. In case of tenant’s death, persons in close relationship to tenant, inter alia a person who was remaining with tenant in de facto same-sex cohabitation, can become the part of the lease contract. The right to ownership of land and other property is not restricted based on sexual orientation or gender identity. LGBT persons are not protected in any special way with regards to evictions. There are no provisions that would specifically forbid discrimination in providing social services around homelessness. However, there are also no provisions that would enable social services to refuse any service on the grounds of sexual orientation or gender identity. There are no state or municipality programmes that would be targeted at LGBT persons with regards to the risk of their homelessness. So far, the problem of

homelessness of LGBT persons has not been recognized, however there is a systemic problem in Poland regarding prevention of homelessness.

**As for the Sports,** LGBTI-phobia is particularly visible in football but is not limited to this sports discipline. There are no specific measures adopted to prevent, fight and prosecute discriminatory abuse referring to SOGIESC during and in relation to sporting events in Poland. The 2015 government action plan “Sport Development Programme until 2020” proposes some actions against homophobia in sports (other grounds are not covered), but these are not being implemented. The state authorities do not engage in raising awareness of LGBTI issues in sports in any way and elected officials often fail to condemn manifestations of LGBTI-phobia in sports.

**As for the Right to seek Asylum,** well-founded fear of persecution on grounds of SOGI may be a sufficient reason for granting refugee status and asylum in Poland. In practice however, there are cases of refusal and expulsion of foreigners with legitimate claims for international protection based on their SOGI. The merits of the case are decided mainly based on the applicant’s testimony. No psychological or other tests in refugee procedures are required or performed. Applicants are not asked to provide detailed account of their sexual practices or to produce “evidence” to prove their SOGI in asylum claims. Theoretically, asylum seekers are not sent back to the country where their life or freedom may be threatened or there is a fear of torture, inhuman or degrading treatment and punishment because of their SOGI. However, the Border Police routinely deny asylum seekers at the Belarus-Poland border the right to apply for asylum thus forcing them to remain in unsafe circumstances or return to their country of origin. This may affect LGBT asylum seekers, e.g. those fleeing persecution in Chechnya or Tajikistan. There are no specific measures in place to prevent violence against LGBT asylum seekers deprived of their liberty. People are placed in detention centres based on the information in their official documents. There are no good practices or procedures regarding self-determined name and gender identity of transgender asylum seekers. There are no official statistics on the number of asylum proceedings. Between 2012 and 2018, one Polish NGO handled nine cases of persons seeking international protection in Poland because of fear of persecution on grounds of their SOGI.

**As for the National Human Rights Structures,** Commissioner for Human Rights and Plenipotentiary for Equal Treatment are two public institutions creating Polish human rights structures. While Commissioner is independent from the government the Plenipotentiary is an institution inside the governmental framework. During the whole analysed period Commissioner has been using their competences extensively to address the issue of intolerance based on sexual orientation and gender identity. Commissioner’s engagement and dedication led to a positive evaluation of his work by the LGBT NGOs and LGBT community. Since appointing Adam Bodnar on the position of Commissioner in 2015 this institution became an object of constant attacks of right-wing politicians aimed at discrediting the work and the person of Adam Bodnar. These attacks as well as

attempts to reduce the budget of this institution might result in weakening the office of Commissioner and hampering its effectiveness to perform assigned tasks. In the period between 2011 and 2015 Plenipotentiary engaged in a meaningful cooperation with LGBT organizations and explicitly addressed the need to provide equal treatment towards LGBT persons. Since 2015, when the Law and Justice party formed a government the role of Plenipotentiary became marginal. LGBT NGOs are of the opinion that currently this body does not play any role in enhancing the protection of LGBT persons in Poland.

**As for the Discrimination on multiple Grounds** there is no legislation that would directly introduce the definition of multiple discrimination or explicitly prohibit it. There are also no known state measures that would proactively identify, protect or support LGBTI groups affected by multiple discrimination.

## Recommendations

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### **General**

- 1) Providing full implementation of the rights and freedoms guaranteed in the Appendix to the Recommendation CM/Rec(2010)5.
- 2) Refraining from further weakening of already existing protection of LGBT persons in Poland in the areas covered by the Appendix to the Recommendation CM/Rec(2010)5.

### **Right to Life, Security and Protection from Violence**

- 1) Amending the Criminal Code in the way that would penalize hate speech and hate crimes based on sexual orientation and gender identity.
- 2) Introducing an effective system of data collection that would obligate law enforcement agencies to recognize anti-LGBT motives of a crime.
- 3) Amending the national legislation in way that would effectively implement the guaranties arising from the Victims' Rights Directive, particularly by establishing the system of obligatory assessment of individual needs of victims of homophobic, biphobic and transphobic hate crimes that would be integrated with the system of victims' support and protection.

### **Freedom of Association**

- 1) Introduction of regulations or commonly accepted practices to enable organizations working for the benefit of people at risk of discrimination on the grounds of sexual orientation and gender identity to be involved as partners in the development, consultation and - where possible - implementation of public policies and legislation, both at local and national level.
- 2) Resignation from practices and institutional mechanisms aimed at providing strict political control over distribution of public funds to LGBT NGOs, especially in the framework of the National Freedom Institute – Centre for the Development of Civil Society.

### **Freedom of Expression and Peaceful Assembly**

- 1) Resignation from instrumental use of legal provisions (for instance prohibiting 'slandering Polish state symbols') that might result in hindering the freedom of expression of LGBT NGOs and LGBT community.
- 2) Resignation from instrumental use of new restrictions regarding the exercise of freedom of a peaceful assembly, especially those one regulating organizations of counter-demonstrations and spontaneous assemblies as well as granting an assembly the status of a 'cyclical assembly'.



### ***Right for Respect of Personal and Family Life***

- 1) Introducing national laws regulating relationships between persons of the same-sex preferably in the form of marriage equality or at least in the form of registered partnerships with the comprehensive catalogue of rights and obligations.
- 2) Introducing national laws regulating the procedure of legal gender reassignment; such law should implement the latest international standards of human rights in this area, in particular the Yogyakarta Principles, and should include no prerequisites for any physical changes, including hormone therapy.
- 3) Establishing a legal practice ensuring the effective right to use services of medically assisted procreation (provided within the framework of the Act on the infertility treatment), regardless of the sexual orientation and gender identity of the patients.

### ***Employment***

- 1) Broadening the catalogue of the protected grounds in the existing labour laws by adding the gender identity as protected characteristics to the Labour Code, the Act on employment promotion and labour market institutions and the Act on Equal treatment.
- 2) Intensifying actions by developing prevention strategies and programs to promote the knowledge about the equal treatment principle as well as measures to combat discrimination in employment based on sexual orientation and gender identity.

### ***Education***

- 1) Introducing effective training for the teaching staff that would cover issues related to appropriate treatment of students who may be at risk of discrimination based on sexual orientation and gender identity. Training should include: (1) the topic of respect for diversity, equality, human rights and anti-discrimination legislation, (2) the subject of homophobic, biphobic and transphobic discrimination, bullying and sexual harassment, in order to form an appropriate reaction to this type of incidents.
- 2) Ensuring through appropriate provisions in the curriculum that the issue of gender and sexual diversity, described without stereotyping and prejudice, would appear in the curriculum of the subjects such as Biology, History, Civic Education and Polish.

### ***Health***

- 1) Taking into account the specific needs of health care resulting from sexual orientation and gender identity in:
  - a. national health strategies,
  - b. public health research,

- c. suicide prevention programs,
  - d. curricula of future doctors,
  - e. courses and training,
  - f. mechanisms for monitoring and controlling the quality of medical services.
- 2) Granting transgender persons free access to the medical services associated with gender reassignment treatment.
  - 3) Closing any facilities and centres offering a conversion therapy as a legitimate therapeutic method for transgender individuals, homosexuals or bisexuals.
  - 4) Placing a complete ban on surgical intervention in intersex children's bodies in the so-called body-normalization.

### ***Housing***

- 1) Establishing (for instance as a joint enterprise of local authorities and LGBT NGOs) stationary shelter providing services (accommodation, food, psychological support and social worker assistance) for people who were forced to leave their current place of stay due to their sexual orientation or gender identity.
- 2) Creating the support programs that would meet the specific risk of homelessness among people at risk of discrimination based on sexual orientation and gender identity, especially young people and children.
- 3) Including issues of sexual orientation and gender identity in the training of future social workers, particularly in relation to LGBT persons at risk of discrimination in the context of the family.

### ***Sports***

- 1) Make the Ministry of Sport and Tourism and those organizations subjected to it legally responsible for countering LGBTI-phobia in sports.
- 2) Ensure effective and adequate penalties for football clubs in the case of LGBTI-phobia on stadiums
- 3) Ensure that the sports associations' ethics or disciplinary regulations contain non-discrimination provisions inclusive of SOGIESC.

### ***Right to Seek Asylum***

- 1) Introduce sensitivity training on SOGI to staff of the Office for Foreigners and Border Police
- 2) Introduce effective system of collecting information on asylum claims based on SOGI.
- 3) Prevent detention of persons whose SOGI contribute to their enhanced vulnerability through effective screening and assessment system.
- 4) Introducing training on sensitivity and country of origin to interpreters engaged in official interpretations of asylum interviews to secure clarity and consistency.

***National Human Rights Structures***

- 1) Resigning from attacks on the office of Commissioner for Human Rights as well as attempts to reduce budget of this institution.
- 2) Engaging by the governmental Plenipotentiary for Equal Treatment into a meaningful cooperation with LGBT NGOs.

***Discrimination on Multiple Grounds***

- 1) Adding definition of multiple discrimination to the Equal Treatment Act.
- 2) Support initiatives and programs highlighting the special significance of anti-discrimination prevention in the case of overlapping grounds of discrimination, particularly where it concerns sexual orientation or gender identity.

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## List of abbreviations

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### Organizations and Institutions

CBA	Centralne Biuro Antykorupcyjne	Central Anticorruption Bureau
CBOS	Centrum Badania Opinii Społecznej	Public Opinion Research Center
GIODO	Generalny Inspektor Ochrony Danych Osobowych	Inspector General for the Protection of Personal Data
IPN	Instytut Pamięci Narodowej	Institute of National Remembrance
KRRiT	Krajowa Rada Radiofonii i Telewizji	National Broadcasting Council
KPH	Stowarzyszenie Kampania Przeciw Homofobii	Campaign Against Homophobia
KRS	Krajowy Rejestr Sądowy	National Court Register
MEN	Minister Edukacji Narodowej	Ministry of National Education
MS	Minister Sprawiedliwości	Ministry of Justice
MSiT	Minister Sportu i Turystyki	Ministry of Sport and Tourism
MSWiA	Minister Spraw Wewnętrznych i Administracji	Ministry of Internal Affairs and Administration
NIK	Najwyższa Izba Kontroli	Supreme Audit Office
NSA	Naczelny Sąd Administracyjny	Supreme Administrative Court
PRT	Pełnomocnik Rządu ds. Społeczeństwa Obywatelskiego i Równego Traktowania	Government Plenipotentiary for Civil Society and Equal Treatment
PTPA	Polskie Towarzystwo Prawa Antydyskryminacyjnego	Polish Society for Anti-Discrimination Law
RPD	Rzecznik Praw Dziecka	Ombudsman for Children
RPO	Rzecznik Praw Obywatelskich	Commissioner for Human Rights
SIP	Stowarzyszenie Interwencji Prawnej	Association for Legal Intervention
TEA	Towarzystwo Edukacji Antydyskryminacyjnej	Society for Anti-discrimination Education
WSA	Wojewódzki Administracyjny Sąd	Voivodeship Administrative Court



## Abbreviations of the Names of Legal Acts

CrC	Act of 6 June 1997, The Criminal Code [Pol.: Kodeks Karny] (Journal of Laws No. 88, item. 553, as amended)
ECC	Act of 6 June 1997, The Executive Criminal Code [Pol.: Kodeks karny wykonawczy] (Journal of Laws No 90, item. 557, as amended)
Constitution	The Constitution of The Republic of Poland of 2 April 1997 (Journal of Laws No 78, item. 483, as amended)
LC	Act of 26 June 1974, The LC [Pol.: KP, Kodeks Pracy] (unified text of 23 December 1997, Journal of Laws 1998 No 21, item 94, as amended)
CCP	Act of 17 November 1964, Code of Civil Procedure, Kodes Postępowania Cywilnego] (Journal of Laws No 43, item 296, as amended)
CCrP	Act of 6 June 1997, Code of Criminal Proceedings [Pol.: Kodeks postępowania karnego] (Journal of Laws No 89, item 555, as amended)
PDPA	Personal Data Protection Act of 29 August 1997 [Pol.: Ustawa o ochronie danych osobowych] (unified text of 17 June 2002, Journal of Laws No 101, item 926 as amended)
AoRPO	Act of 15 July 1987 on Human Rights Defender [Pol.: Ustawa o rzeczniku praw obywatelskich] (unified text of 9 February 2001 Journal of Laws No 14, item 147, as amended)
AoGPA	Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland [Pol.: Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej] unified text of 22 October 2009 (Journal of Laws No 189, item 1472 as amended)
ETA	Act of 3 December of 2010 on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment [Pol.: Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania] (Journal of Laws No 254, item 1700)

## Glossary

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This glossary is based on the glossary in the report “Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe.”<sup>1</sup>

**Cisnormativity** is the assumption that all human beings are cisgender, i.e. have a gender identity which matches the sex they were assigned at birth.

**Discrimination** is legally defined as unjustified, unequal treatment:

– **Direct discrimination** occurs when for a reason related to one or more prohibited grounds (for example, sexual orientation and gender identity) a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when, for a reason related to one or more prohibited grounds, a person or group of persons is subjected to a detriment.

– **Experienced discrimination**, also called subjective discrimination, is the experience of being discriminated against. Experienced discrimination does not necessarily entail discrimination in the legal sense.

– **Indirect discrimination** occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds (including sexual orientation and gender identity) at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

**Gay** - A man whose primary romantic, emotional, physical and sexual attractions are to men.

**Gender identity** refers to a person’s deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, “gender expression”) such as dress, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth – these persons are referred to as “transgender” persons.

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<sup>1</sup> Based on the glossary in Council of Europe, *Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe*, 2nd ed. (Strasbourg: Council of Europe Publishing, 2011), [https://www.coe.int/t/commissioner/Source/LGBT/LGBTStudy2011\\_en.pdf](https://www.coe.int/t/commissioner/Source/LGBT/LGBTStudy2011_en.pdf) (accessed 1 May 2017).

Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

**Gender marker** is a gendered designator on, for example, an identity document (passports). The most obvious gender markers are designations such as male/female or Mr/Mrs/Ms/Miss. They can also be professional titles or personal pronouns, or coded numbers, such as social security numbers and tax numbers which may use certain combinations for men and for women (for example, even/uneven numbers). Gender markers are often embedded in ID cards or personal certificates such as passports, birth certificates, school diplomas, and employers' reference letters.

**Gender reassignment treatment** refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one's preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilization (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

**Harassment** constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity.

**Hate crime** towards LGBTI persons refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBTI group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation, gender identity or sex characteristics of the victim.

**Hate speech** against LGBTI people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBTI people – for example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

**Hate-motivated incident** are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

**Heteronormativity** can be defined as the institutions, structures of understanding and practical orientations that make heterosexuality seem coherent, natural and privileged. It involves the assumption that everyone is heterosexual, and that heterosexuality is the ideal and superior to homosexuality or bisexuality. Heteronormativity also includes the privileging of normative expressions of gender – what is required or imposed on individuals in order for them to be perceived or accepted as “a real man” or “a real woman” as the only available categories.

**Heterosexual** – Persons emotionally, romantically, or sexually attracted/committed to the opposite sex.

**Homophobia** is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.

**Intersex people** are persons who are born with chromosomal, hormonal levels or genital characteristics which do not correspond to the given standard of “male” or “female” categories as for sexual or reproductive anatomy. This word has replaced the term “hermaphrodite”, which was extensively used by medical practitioners during the 18th and 19th centuries. Intersexuality may take different forms and cover a wide range of conditions.

**Lesbian** - A woman whose primary romantic, emotional, physical and sexual attractions are to women.

**LGBTI people** or **LGBTI persons** is an umbrella term used to encompass lesbian, gay, bisexual, transgender and intersex persons. It is a heterogeneous group that is often bundled together under the LGBTI heading in social and political arenas.

**Multiple discrimination** describes discrimination that takes place on the basis of several grounds operating separately. Another term often used in this regard is intersectional discrimination, which refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable.

**Pronouns** - words that can be used to refer to a person in place of their name, e.g. he/she, him/her, they.

**Queer** is a term laden with various meanings and a long history, but currently often denotes persons who do not wish to be identified with reference to traditional notions of gender and sexual orientation and eschew heterosexual, cis- and heteronormative and gender-binary categorizations. It is also a theory, which offers a critical perspective into cis- and heteronormativity.

**Sexual orientation** is understood to refer to each person’s capacity for profound emotional, affection and sexual attraction to, and intimate and sexual relations with, individuals of a different gender

(heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

**Transgender** persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels “male” or “female”, transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned “female” at birth but has a gender identity which is “male” or within a masculine gender identity spectrum. A transgender woman is a person who was assigned “male” at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners.

**Transphobia** refers to a similar phenomenon, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalization, marginalization, social exclusion and violence on grounds of sexual orientation or gender identity.

**Transvestite (cross-dresser)** describes a person who regularly, although part-time, wears clothes mostly associated with the opposite gender to her or his birth gender.

## Introduction

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*Paweł Knut & Piotr Godzisz*

Recommendation CM/Rec(2010)5 was shaped as a comprehensive roadmap for Council of Europe Member States aimed at helping them to enhance the protection of LGBT persons in various areas of social life.

The opportunities arising from the adoption of this document were quickly recognized by human rights NGOs. When in 2012 ILGA-Europe encouraged several national NGOs to supplement Council of Europe's official process of reviewing the implementation of the Recommendation, two Polish NGOs acting for the benefit of LGBTI persons, Campaign Against Homophobia and Trans-Fuzja Foundation, decided to prepare a shadow report describing the level of implementation of the Recommendation into the Polish legal framework and state policies. The report published in 2012 clearly shows that, while gaps in some areas covered by the Recommendation were identified, Polish authorities engaged in a slow but gradual process of enhancing the protection of LGBT persons.

In 2018, six years after the publication of the first report, the landscape of protection of LGBT rights in Poland has radically changed. After the general election in 2015 was won by the Law and Justice party LGBTI community in Poland started witnessing a carefully tailored process of dismantling the system of existing protection of LGBTI persons. The weakening of the protection has become particularly visible in areas such as the Right to Life, Security and Protection from Violence; the Right for Respect of Personal and Family life, Education and Health.

Once again, upon the invitation of ILGA-Europe and TGEU two leading Polish LGBT NGOs, Lambda Warsaw and the Campaign Against Homophobia engaged into the process of assessing the level of implementation of the Recommendation. Research for the second report was conducted from March until June 2018 and covered the period from 2012 until 2018. Data gathered during this analysis revealed that in the examined period (especially after 2015) little attention was paid by the authorities to guarantees arising from the Recommendation. The knowledge about the existence of this document is still limited, both among state actors that are responsible for its implementation as well as general public. Also, despite the invitations sent by Lambda Warsaw and Campaign Against Homophobia to authorities responsible for preparing inputs for the state report (encouraging to organise joint meetings aimed at exchanging knowledge and experience in the areas covered by the Recommendation), public institutions showed little or no interest in establishing such cooperation.

At the time of finalizing this research, the state report still has not been published. Thus, the review included in this document refers mainly to

the knowledge and experience of the NGOs that have been working in Poland for the benefit of LGBTI persons throughout the whole period covered by this study.

## Methodology

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*Piotr Godzisz & Paweł Knut*

The purpose of this research was threefold. First, the project sought to document and assess the developments in the area covered by the Recommendation CM/Rec (2010)5 in Poland since the 1st report on the implementation (2012). Second, we aimed to update and improve the readability and accessibility of the information included in the 1st report on the implementation (2012) to increase the impact of the findings. Finally, this research sought to provide evidence and formulate recommendations to be used as an advocacy tool in the dialogue with the government and other stakeholders.

The methodology for this research builds upon the methodology from the 2012 report and benefits from methodological and practical guidance from ILGA-Europe and Transgender Europe, offered during the seminar in Brussels (March 29-30, 2018). Given the practical goals of this research (above), a socio-legal, empirically-driven approach to data collection and analysis was adopted. This approach allowed us to generate original insights into the treatment of LGBTI rights in Poland. It allowed us to identify both gaps in the legal framework (e.g. hate crime and hate speech) and difficulties in the enforcement of existing laws (e.g. lack of the legal recognition of a foreign birth certificate of a child having same-sex parents). Ultimately, it also allowed us to provide evidence for policy-making and form evidence-based recommendations.

### Data Collection

The study uses a mixed-methods approach, combining insights from three sources of data: desk-based research, qualitative primary research, and secondary data analysis.

#### Desk-based Research

In the first step of the research, researchers analysed publicly available information, including legal and policy frameworks governing all twelve areas covered by the Annex, rejected bills, parliamentary debates, reports, court decisions, civil society texts and other types of documents. The difference between laws on the books and laws in practice was interrogated by comparing stated goals and levels of protection in the laws on the one hand, and available data on discrimination, hate crime and hate speech, case law, reports and other documents on the other.

#### Qualitative Primary Research

*Organizations' own data*



Lambda Warsaw and the KPH jointly hold possibly the biggest bank of knowledge on LGBTI rights legislation, policy and practice in Poland. This report benefits from internal data collected over years of providing direct services (e.g. psychological and legal support) to members of the LGBTI community, conducting training and research, and doing advocacy.

In addition to Lambda Warsaw and the KPH's internal information, local and grass-roots LGBTI rights organizations, human rights organizations with broader mandates, lawyers, journalists and scholars with knowledge of specific issues covered by the Recommendation CM/Rec (2010)5 were asked to provide inputs for the report. Altogether, four organizations have provided information.<sup>2</sup>

#### *Questionnaire and follow up meetings*

The key way of collecting new data for this research was the questionnaire prepared by the Council of Europe which was sent to the member states (see Annex 1). The questionnaire was translated and localized to the situation in Poland by the research team.

Considering the breadth of the issues covered in the questionnaire, a list of institutions was drawn up by the research team and questions were divided between institutions according to their mandates. The questionnaires were distributed by email as freedom of information requests in April 2018. In addition, the Ministry of Foreign Affairs received a request to share the draft report prepared for the CDDH in July 2018. Altogether, 20 institutions received requests for information, out of which 18 provided written responses.

It should be noted that the answers provided by various institutions were very diverse in terms of style, size, and the detail of the information contained. Some were very brief and contained little or no information about the matter, while others were more comprehensive. Such an uneven level of responses was also observed in the first monitoring exercise in 2012. A similar observation was noted by the Society for Anti-discrimination Education (TEA) in their research.

Alongside the requests to provide information, requests for meetings were sent to all institutions (in separate emails). The stated aim of the meetings was to exchange information and experiences in order to help prepare the reports on the implementation of the Recommendation. Only four institutions responded favourably to the meeting requests, and four meetings were held in June 2018. The details of where the questionnaires and meeting requests were sent and who responded are presented in Table 1 below.

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<sup>2</sup> These are: Trans-Fuzja foundation, Love Does Not Exclude association, Venus of Milo association and Association for Legal Intervention.

Institution receiving requests	Response to Fol	Meeting
Ministry of Justice	✓	×
Central Prison Service Management	✓	✓
Government Plenipotentiary for the Development of Civil Society and Equal Treatment	✓	×
Inspector General for the Protection of Personal Data	✓	×
Institute of National Remembrance	✓	×
Ministry of Foreign Affairs	✓	×
Ministry of Health	✓	✓
Ministry of Interior and Administration	✓	×
Ministry of Labour and Social Policy	✓	×
Ministry of National Education	✓	×
Ministry of Sports and Tourism	✓	×
National Health Fund	×	✓
National Police Headquarters	×	✓
National School of the Judiciary and Prosecution Service	✓	×
Office for Foreigners	✓	×
Office of the Commissioner for Children's Rights	✓	×
Office of the Commissioner for Human Rights	✓	×
Patient's Rights Ombudsman	✓	×
Prosecutor General's Office	✓	×
Supreme Audit Office	✓	×

**Table 1** Overview of the responses to the freedom of information requests and meeting requests

## Analysis

Before fieldwork for this study began, a system for data collection was developed to ensure that relevant and comparable information is collected in all analysed areas. Researchers were asked to categorize data based on the 12 areas included in the Annex. Each category contained data on, *inter alia*, LGBTI-specific legislation and policies, other applicable laws and policies, legal practice and other issues, such as statistics.

The analysis was divided in two stages. In the first stage, the content of the first report from 2012 was scrutinized with an aim to verify outdated or missing information. In the second stage, the newly-gathered sources were analysed with a view to supplement and update the existing information. At this stage researchers decided which sources of information will be used as source of reference for the final report. The selected documents were those that (1) were the most recent, the most comprehensive, the most authoritative or the most debated; (2) had the highest potential impact on LGBTI rights.

Data gathered through different methods (public and civil society documents, responses to the freedom of information requests and meetings with institutions, partner organizations' internal data, as well as inputs from other organizations) were triangulated. Triangulation helps to corroborate results and is 'a useful stimulant to reflexivity.'

### Limitations

All efforts were made to ensure the comprehensiveness and accuracy of the report. Nevertheless, the low level of responsiveness of institutions, measured as their willingness to meet and the quality of their responses to the freedom of information requests, means that some relevant initiatives and developments may not be included in this report.

### Ethical Considerations

While NGOs rarely have a formalized ethics approval procedure, ethical considerations were a priority in this project. Best practices on research ethics, including data protection, rights of research participants and safety and well-being of researchers, were shared by the project manager and senior researcher (editors of this report) with the research team. Both partner organizations have high-level of data protection standards, in accordance with relevant EU and national regulations. All cases from Lambda Warsaw and the KPH are reported in an anonymized form, ensuring confidentiality of disclosures, unless details of the case had been made public before the publication of the report. All data on cases shared by other organizations were provided to researchers in an anonymized form. Original information collected specifically for this research through freedom of information requests and during follow-up meetings is public.

## I. Right to Life, Security and Protection from Violence

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*Piotr Godzisz & Karolina Więckiewicz*

- *Neither the Criminal Code nor any other law requires penalty enhancements for crimes motivated by anti-LGBT bias. Hate speech based on SOGI is not recognized. There is evidence that the current law does not adequately address LGBT-phobia.*
- *The government made international commitments to recognize SOGI as protected grounds in hate crime and hate speech laws but failed to do so.*
- *Bills aimed at recognizing SOGI as protected grounds have been repeatedly put forward by opposition parties but have not received support from the government.*
- *Sex characteristics have never been considered as protected grounds.*
- *There are no reliable statistics on anti-LGBT hate crime in Poland. Some official figures are published, but they contain only a handful of cases per year.*
- *Police, prosecution services and courts use different methods of recording of hate crimes, resulting in differences in numbers and cases 'disappearing' on the way through the criminal justice system.*
- *Most police officers and some prosecutors have received basic hate crime training where LGBT issues may be mentioned. Some training on anti-LGBT hate crime specifically is provided by NGOs on an irregular basis.*
- *There are no guidelines on dealing with anti-LGBT hate crimes for police or prosecutors.*
- *The police have recently set up a network of hate crime coordinators and a network of cyberhate coordinators. There are no community liaison officers.*
- *There is no obligation to conduct the individual needs assessment of victims of hate crime or victims who are vulnerable because of their SOGI. The Victims' Rights Directive's guarantees for hate crime victims have not been implemented.*
- *The levels of social acceptance of LGBT people is low but is steadily increasing. There is no research on the levels of social acceptance of intersex people.*
- *There are no systematic solutions addressing the situation of LGBT people in prison. Actions to improve safety and well-being of LGBT prisoners are taken on an individual basis.*
- *There have been no campaigns raising awareness of anti-LGBT hate crimes organized by public authorities.*
- *There have been no efforts on the part of state authorities to curb hate speech targeting LGBT people.*

## Legal Measures

Legal measures to combat hate crimes and hate speech are in force in the Polish legislation. They are a consequence of experiences of WWII and genocide committed by the Nazi regime and are all codified in the chapter of the Criminal Code (CC) called 'Crimes against mankind'.<sup>3</sup> The provisions on hate crime and hate speech prohibit, inter alia, the use of violence or threats against, and the public insulting of, a group of persons or a particular person because of their national, ethnic, racial origin or political, religious beliefs.<sup>4</sup> Incitement to hatred based on race, national or ethnic origin or religion is also banned. These crimes are prosecuted *ex officio*.

The above measures do not mention sexual orientation, gender identity as grounds of hate crimes, which, together with the principle of *nullum crimen sine lege* (no crime without a law) means that these rules do not include the protection against anti-LGBT hate crimes. There are no other measures implemented to ensure an effective, prompt and impartial investigation into alleged cases of anti-LGBT hate crimes. There are also no specific legal or policy measures establishing anti-LGBT motivation of a crime as an aggravating circumstance in any legal provision or policy. According to the Ministry of Justice the general sentencing principles are sufficient in this regard. The Ministry however failed to provide examples when bias motivation of a crime based on sexual orientation or gender identity was taken into consideration by courts.

### **Case: Attacks on LGBT organizations**

*In the last three years there have been numerous attacks on premises of LGBT organizations.*

*February 2016 - doors of Lambda Warsaw were spat on, "stop faggots" sign and a Celtic cross was carved, and a poster was burned.*

*March 2016 - a brick was thrown through the window of Lambda Warsaw (the window has a rainbow flag displayed).*

*March 2016 - during office hours a few young men who were voicing anti-gay slurs tried to get into the office of Campaign Against Homophobia where employees were working.*

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<sup>3</sup> Ustawa Kodeks karny z dn. 6.06.1997 z późn. zm. [The Criminal Code of 6 June 1997, as amended].

<sup>4</sup> Unofficial English translation of selected hate crime provisions in the Polish Criminal Code can be found on <http://legislationline.org/topics/country/10/topic/4/subtopic/79>.

*April 2016 - windows were broken at Campaign Against Homophobia (two times within 10 days).*

*May 2017 - a stone was thrown through the window of Campaign Against Homophobia.*

*June 2017 - there was a break into the Stonewall Group (Poznan) office from which rainbow flags were stolen and other staff was demolished.*

*In all these cases there were signs that the attacks happened because of anti-LGBT motivation of the attackers. They knew that they were attacking LGBT organizations, expressed their negative views (anti-gay slurs) or used violence in a symbolic way.*

*At one occasion of the attack on the KPH, a police officer suggested that the organization should change the location and that this attack was caused by “sticking a stick into ants’ nest”.<sup>5</sup>*

*In all cases the investigations were discontinued due to lack of possibility to detect the attacker. This shows that even such publicized cases lack effective investigation.*

*The Commissioner for Human Rights condemned the attacks and monitored the preparatory proceedings.<sup>6</sup>*

There has been no effort made to ensure that such cases are recognized as important ones that require special legislative or other measures. The Ministry of Justice did not provide any information regarding this issue. The National Prosecutor’s office emphasizes that the special attention is paid to crime committed with bias motivation regarding ethnicity, nationality and religion regardless of the victims’ sexual orientation or gender identity or any other characteristics. It shows that there is still lack of understanding of anti-LGBT motivation and the victim’s sexual orientation or gender identity as a reason for committing a crime.

## Recommendations to Recognize Anti-LGBT Hate Crime and Hate Speech in the Law

Many international human rights review and monitoring bodies have observed that the lack of provisions on SOGI-based hate crimes and

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<sup>5</sup> KPH, ‘Trzeci atak na siedzibę KPH w tym roku!’ (*Kampania Przeciw Homofobii*, 27 April 2016) <<https://kph.org.pl/trzeci-atak-na-siedzibe-kph-w-tym-roku/>> accessed 1 July 2018.

<sup>6</sup> RPO, ‘Kolejny atak na siedzibę organizacji pozarządowej działającej na rzecz praw osób LGBT’ (*Rzecznik Praw Obywatelskich*, 13 June 2017) <<https://www.rpo.gov.pl/pl/content/kolejny-atak-na-siedzibe-organizacji-pozarządowej-działającej-na-rzecz-praw-osob-lgbt>> accessed 1 July 2018.

hate speech in Poland is an obstacle in access to justice for LGBT victims. Recommendations to this end were made, *inter alia*, by the Committee Against Torture,<sup>7</sup> the Human Rights Committee,<sup>8</sup> the Committee on the Rights of the Child,<sup>9</sup> the European Commission Against Racism and Intolerance,<sup>10</sup> and the OSCE Office for Democratic Institutions and Human Rights.<sup>11</sup> The Polish government also accepted recommendations to recognize SOGI hate crime and hate speech in the 2<sup>nd</sup> and 3<sup>rd</sup> UPR cycle.<sup>12</sup>

Despite repeated appeals by civil society organizations, and despite international recommendations, the government has consistently refused to engage in legislating against SOGI-based hate speech and hate crime (sex characteristics have never been considered as a protected ground).<sup>13</sup> Bills aimed at adding sexual orientation, gender identity, gender, age and disability to hate crime and hate speech provisions were discussed in the Sejm (the lower chamber of the Polish parliament) at multiple occasions between 2011 and 2015. Most recently, the proposal for a relevant change was submitted in the

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<sup>7</sup> CAT, 'Consideration Of Reports Submitted By States Parties Under Article 19 Of The Convention Conclusions and Recommendations of the Committee against Torture POLAND CAT/C/POL/CO/4' (CAT, 2007)

<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FPOL%2FCO%2F4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FPOL%2FCO%2F4&Lang=en)> [accessed 10 October 2015]; CAT, 'Summary Record of the 1177th Meeting. Consideration of Reports Submitted by States Parties under Article 19 of the Convention (Continued) Combined Fifth and Sixth Periodic Reports of Poland (Continued) CAT/C/SR.1177' (CAT, 2013)

<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/POL/CO/5-6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/POL/CO/5-6&Lang=En)> [accessed 10 October 2015].

<sup>8</sup> HRCtee, 'Consideration of Reports Submitted by States Parties under Article 40 of the Covenant Concluding Observations of the Human Rights Committee Poland CCRP/C/POL/CO/6'

<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/POL/CO/6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/POL/CO/6&Lang=En)> accessed 10 October 2015; HRCtee, 'Concluding Observations on the Seventh Periodic Report of Poland' <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/POL/CO/7&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/POL/CO/7&Lang=En)> accessed 6 May 2017.

<sup>9</sup> CRC, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Poland'

<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FPOL%2FCO%2F3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FPOL%2FCO%2F3-4&Lang=en)> accessed 1 January 2016.

<sup>10</sup> ECRI, 'ECRI Report on Poland (Fifth Monitoring Cycle)' <<https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Poland/POL-CbC-V-2015-20-ENG.pdf>> accessed 9 June 2015.

<sup>11</sup> ODIHR, 'Opinion on the Draft Amendments to Certain Provisions of the Criminal Code of Poland' <[www.legislationline.org](http://www.legislationline.org)> accessed 24 February 2016.

<sup>12</sup> HRC, 'Report of the Working Group on the Universal Periodic Review Poland' <<https://daccess-ods.un.org/TMP/3377035.55822372.html>> accessed 1 January 2016; HRC, 'Report of the Working Group on the Universal Periodic Review - Poland' <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/36/14](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/14)> accessed 12 January 2018.

<sup>13</sup> Piotr Godzisz and Dorota Pudzianowska, 'Do Some Identities Deserve More Protection Than Others? The Case of Anti-LGB Hate Crime Laws in Poland' in Jennifer Scheppe and Mark Walters (eds), *The Globalization of Hate: Internationalizing Hate Crime?* (Oxford University Press 2016).



summer of 2016 by the Nowoczesna Party in collaboration with a network of NGOs. The bill, similar in wording to the previous bills, was rejected in October 2016, having received negative opinions from the Ministry of Justice and the Prosecutor General.<sup>14</sup> Both the government and the Prosecutor General take a position that there is no reason for which any group that does not fall within the scope of criminal definition of hate crime as currently regulated in the CrC should be taken into special consideration and attention. Historical origins of the current provisions, as well as arguments about the freedom of speech, morality and religious freedom are also often invoked by those opposing criminalization of homophobic hate speech.<sup>15</sup> In this monitoring exercise, neither the Ministry of Justice<sup>16</sup> nor the Ministry of Interior and Administration<sup>17</sup> provided any information about the efforts and plans in this area.

### Recording Anti-LGBT Hate Crimes by the Police

A new data collection system was put in place in 2015 in the police and the Ministry of Interior and Administration. A working definition of hate crime is used to record cases. According to the definition,

*[h]ate crime is:*

*a) any offence of a criminal nature, including offences against people and their property, in which a victim, place or other object of offence is selected because of their actual or alleged affiliation, relationship, belonging, membership or support for a group defined in point b),*

*b) The group may be distinguished on the basis of characteristics common to its members such as actual or implied race, national or ethnic origin, language, colour, religion, sex, age, physical or mental disability, sexual orientation or other similar characteristics.<sup>18</sup>*

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<sup>14</sup> Mateusz Wąsik and Piotr Godzisz, 'Hate Crime in Poland 2012-2016' <<https://drive.google.com/file/d/0B-M0IV58Ues60TBxNOR3am5WTmc/view>> accessed 25 November 2016.

<sup>15</sup> Godzisz and Pudzianowska (n 13).

<sup>16</sup> Letter from the Ministry of Justice of 8 May 2018.

<sup>17</sup> Letter from the Ministry of Interior and Administration of 8 May 2018.

<sup>18</sup> Dorota Pudzianowska and others, 'Rasa, Pochodzenie Etniczne, Narodowe Oraz Wyznanie [Race, Ethnicity, Nationality and Religion]' in Dorota Pudzianowska and Jarosław Jagura (eds), *Równe traktowanie uczestników postępowania. Przewodnik dla sędziów i prokuratorów [Equal treatment of participants in proceedings. A guide for judges and prosecutors]* (RPO 2016) 101 <<http://www.hfhr.pl/przewodnik-rowne-traktowanie-uczestnikow-postepowan/>> accessed 2 May 2017.



According to information provided by the Ministry of Interior and Administration<sup>19</sup> police officers who register an incident have the possibility to indicate that a particular crime is hate-motivated (there is a so-called “hate crime checkbox”). The officer makes an assessment about the motivation based on the report received and the circumstances (for instance, the way the perpetrator acted before, during and after the crime that would reveal their negative attitudes towards a specific group that the victim represented or the victim’s characteristics or circumstances that might justify the allegation that the crime was perpetrated because of hate). At this stage it is impossible to indicate specific motivation and its ground. Specific motivations are verified at a later stage based on the content of the file. Statistics in each voivodeship (administrative district) are collated, monthly, by specialized hate crime coordinators (see the case below). The Ministry of Interior and Administration regularly provides hate crime statistics disaggregated by the type of crime and bias motivation to the OSCE Office for Democratic Institutions and Human Rights.

While the recording systems allows to record anti-LGBT hate crimes based on motivation (which is a good thing), the numbers of incidents captured are negligible and many cases are not flagged as bias-motivated. For example, the Ministry of Interior and Administration reported to ODIHR only seven incidents targeting LGBT people in 2014; zero cases in 2015; and 12 cases in 2016. These figures are much smaller than in countries of comparable size, e.g. Spain.

Recent qualitative research found that “[w]hile the system for data collection has been improved, there are significant shortcomings.”<sup>20</sup> According to one expert interviewed by Godzisz and Rawluszko:

*The problem of the Polish system is that it (1) allows inputting these [anti-LGBT bias motivation] data but does not force it (i.e. (...) it is [not] obligatory to fill out the box on the motivation of the offender; (2) it does not allow for identification of the motivation based on the perception of the victim or another person reporting the crime; (3) it does not train police officers on how to fill out this rubric.<sup>21</sup>*

The Ministry of Interior and Administration provided information that a training on the methods of recording hate crime took place in March 2018, in cooperation with ODIHR and FRA.<sup>22</sup> While this activity is one

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<sup>19</sup> Letter from the Ministry of Interior and Administration from 25 April 2018.

<sup>20</sup> Piotr Godzisz and Marta Rawluszko, ‘Responding to Anti-LGBT Hate Crimes in Poland: One Step Forward, Two Steps Back?’, *Running Through Hurdles: Obstacles in the Access to Justice for Victims of Anti-LGBT Hate Crimes in Europe* (Lambda Warsaw forthcoming).

<sup>21</sup> *ibid.*

<sup>22</sup> Letter from the Ministry of Interior and Administration from 25 April 2018.

of few good practices to improve recording under this government, training on the use of existing recording mechanisms is needed for all police officers.

Another obstacle to collecting data on hate crimes based on SOGI was protection of personal data. Some police officers believe (wrongly) that recording the homophobic or transphobic motivation of the crime would require processing sensitive information on the victim's sexual orientation.<sup>23</sup> The research by Godzisz and Rawłuszko further found that

*[o]ther shortcomings include the lack of coordination between different agencies responsible for collecting data at the different levels of the criminal justice procedure. While both the prosecution services and the Ministry of Justice (which collects data on sentenced cases) have also recently improved their methods of data collection, unlike the police, they have not introduced a working definition of hate crime.”<sup>24</sup>*

Because hate crime statistics collated by the Prosecutor General's Office (on prosecutions) and the Ministry of Justice (on court rulings) follow the legal qualification, they do not include cases of anti-LGBT hate crimes.<sup>25</sup> The authors conclude that “[w]hile the number of anti-LGBT hate crimes that are recorded is already low, the lack of training, lack of coordination between agencies and inadequate forms result in under-recording and in the cases “disappearing” on their way through the criminal justice system.”<sup>26</sup>

It should be noted that, while the Prosecutor General's Office regularly publishes reports on the number of prosecuted hate crimes, Police statistics are not available publicly. The ministry claims that the spreadsheets used to collate information about hate crimes in all regions are for internal use only.<sup>27</sup> The experience of civil society shows that data shared does not reflect the actual scale of anti-LGBT hate crime and the experience of NGOs in this regard.

## Reporting

According to all available reports, the level of reporting of anti-LGBT hate crime in Poland is very low.<sup>28</sup> For example, in the report “Social

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<sup>23</sup> Godzisz and Rawłuszko (n 20).

<sup>24</sup> *ibid.*

<sup>25</sup> Single anti-LGBT hate crime cases sporadically appear in reports published by the Prosecutor General's Office.

<sup>26</sup> Godzisz and Rawłuszko (n 20).

<sup>27</sup> Letter from the Ministry of Interior and Administration from 25 April 2018.

<sup>28</sup> FRA, *EU LGBT Survey - European Union Lesbian, Gay, Bisexual and Transgender Survey - Main Results* (FRA 2014)

situation of LGBTQA people in Poland 2015-2016”, only four out of 100 hate incidents were reported 10 out of 100 victims report anti-LGBTI violence.<sup>29</sup>

Despite international recommendations to address the problem,<sup>30</sup> the Ministry of Interior and Administration and the Police ignore underreporting of anti-LGBT hate crime. Unlike some other types of crimes with vulnerable victims (e.g. domestic violence, racist violence), there are no special measures undertaken to encourage victims of anti-LGBT hate crime to come forward and report.<sup>31</sup>

Both the Police and the Prosecutor General’s Office<sup>32</sup> mention the initiative called “A week of supporting victims of crime” as an example of special interest in victims and their rights, a part of which is encouraging to contact law enforcement officials about crimes. This initiative though, organized since 2000, has a general character and has never focused on any particular group of victims or crimes. Victims of anti-LGBT hate crimes have never been explicitly mentioned in the context of the initiative.

Poland has not introduced the possibility of third-party reporting which would allow to report a crime in a place other than a police station, to persons other than police officers (e.g. NGOs) and be legally binding. In practice, most victims report in person at the police station, although it is also possible to report by email or letter.

Theoretically, there is a possibility to make an anonymous report to the Police by anyone who has knowledge about any crime (article 304 of the Criminal Procedure).<sup>33</sup> This can be done by phone or in writing. In practice, anonymous reporting prolongs the proceedings and imposes certain limitations regarding the proceedings. For example, the reporting party, even if they are a victim, are not informed about the proceedings and cannot influence the investigation (e.g. demand that police collect specific proofs, etc.).

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<<http://fra.europa.eu/en/publication/2014/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-main>> accessed 28 March 2014; Magdalena Świder and Mikołaj Winiewski (eds), *Sytuacja Społeczna Osób LGBTQA. Raport Za Lata 2015 – 2016 [The Social Situation of LGBTQA People. Report for the Years 2015 - 2016]* (KPH 2017)  
<<https://drive.google.com/file/d/1b4KKia7c3CICH9DcJLQ8WQuy7-qdw5pB/view>> accessed 5 December 2017.

<sup>29</sup> Świder and Winiewski (n 28).

<sup>30</sup> HRC, ‘Report of the Working Group on the Universal Periodic Review Poland’ (n 12).

<sup>31</sup> A campaign to encourage victims of racist and xenophobic crimes to report was conducted by the then Ministry of Interior in 2014.

<sup>32</sup> Letter from the National Prosecutor’s office from 4 June 2018.

<sup>33</sup> Act of 6 June 1996, Criminal Procedure Code (Journal of Laws 1997 no. 89, item 555).

## Training of Professionals

Many police officers have received basic hate crime training. As the Ministry informs until the end of 2017 a total number of 104 thousand officials have been trained within the program. The program is financed by the Police and trainings are performed by officials who completed the training of trainers organized within the program. The realization of the program is possible also due to collaboration with NGOs engaged in activities regarding combating racism or neofascism and “representing other minority groups at risk of hate crime”.<sup>34</sup>

In theory, the basic training on hate crime covers several bias motivations, including SOGI. Nevertheless, the resistance to explicitly mention SOGI as bias grounds in the letter may suggest that LGBT people are treated as “other minority groups at risk of hate crime” and violence targeting this group is not specifically discussed.

Specialist training on anti-LGBT hate crime is provided by NGOs for police and prosecutors on an irregular basis.<sup>35</sup> Some training programmes offered by NGOs also cover intersex issues. There is no anti-LGBT hate crime training currently offered to judges.

### **Case: Anti-LGBT hate crime training for police officers**

*In 2016, Lambda Warsaw delivered, pro bono, a basic anti-LGBT hate crime training programme to over 430 police officers, while the Polish Society for Anti-Discrimination Law trained over 75 legal practitioners on anti-LGBT hate crime in 2016.*<sup>36</sup>

There are no guidelines on dealing with anti-LGBT hate crimes for police or prosecutors.<sup>37</sup>

The lack of agreed definition of hate crime in Poland leads to differences in the conceptualizations of the problem among professionals.<sup>38</sup> The borders between hate crime and hate speech, as well as non-criminal negative comments on the internet (“hejt”), are blurred, which impacts both the quality of recorded data and the quality of victim support.<sup>39</sup>

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<sup>34</sup> Letter from the Ministry of Interior and Administration from 25 April 2018.

<sup>35</sup> Godzisz and Rawłuszko (n 20).

<sup>36</sup> Mia Gonan and Katarina Jaklin, *Hate Crime: Countering Underreporting and Supporting Victims of Anti-LGBT Hate Crime. Good Practices Report* (Zagreb Pride 2018)

<[http://lgbthatecrime.eu/assets/pdf/Come%20Forward\\_Good\\_Practices\\_Report\\_final\\_update\\_April.pdf](http://lgbthatecrime.eu/assets/pdf/Come%20Forward_Good_Practices_Report_final_update_April.pdf)> accessed 5 May 2018.

<sup>37</sup> Godzisz and Rawłuszko (n 20).

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

Apart from questionnaires delivered directly after the training event, the effectiveness of all interventions aimed at building capacity of police officers to recognize and investigate hate crimes has not been evaluated.<sup>40</sup>

The levels of awareness of anti-LGBT hate crime among police officers vary, depending on issues such as position, training or personal circumstances.<sup>41</sup> Not all police officers are sensitized towards the needs of LGBT people.

## Violence Perpetrated by Police Officers

There are no special procedures regarding reports on hate crime and therefore also no special procedures regarding crimes motivated by anti-LGBT bias, also when they are committed by law enforcement officials. There is, however, evidence that such cases do take place.

### **Case: Police misconduct in the case of two lesbians**

*In 2017 Lambda Warsaw registered a case in which two lesbian girls were maltreated by police officers. They faced an unpleasant situation in a restaurant where they were given looks and the waiter issued a bill that was too high. Because the conflict could not be solved, they called the police. The officials who came put their hands in handcuffs, were calling them “fat bitches” and “dykes”. They took them to a sobriety facility and did the search through their belongings. They refused to give their names and their place of work.*

### **Case: Police brutality in the case of a gay man**

*In 2010, a gay man was apprehended without a just cause in front of a gay club in Warsaw. He was verbally and physically assaulted by two police officers. After contacting with KPH lawyers he decided to initiate criminal and disciplinary proceedings against the perpetrators. as for the disciplinary proceedings only one of the police officer was found guilty but the he did not meet any legal consequences. Criminal proceedings lasted 7 years. Initially, police officers were acquitted, however after lodging an appeal the judgments was revoked and the case was handed back to re-examination. Eventually, in 2017, the Appellate Court in Warsaw found both police officers guilty.<sup>42</sup> At the same time the court decided to conditionally discontinue the proceedings for the probation period (2 years for one perpetrator and 1 year for second perpetrator). The victim decided not to bring appeal to the court of the second instance. The case was litigated by the KPH.*

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<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*

<sup>42</sup> Case IX Ka688/17 [2017] Appellate Court in Warsaw IX Ka688/17.

Cases of police misconduct can be reported to the police or the Commissioner for Human Rights.

## Specialized Hate Crime Police Units

There are no special units for hate crime within the police force, nor are there LGBTI community liaison officers. A positive step in policing hate crime cases was made in 2015 when the Police set up a network of 18 police hate crime coordinators, based in the regional (voivodeship) police headquarters as well as the national police headquarters.<sup>43</sup> Some of the coordinators are actively involved in investigating hate crimes, while all of them are tasked with compiling monthly hate crime statistics and providing advice to investigating officers. The coordinators receive regular specialist hate crime training, which includes some anti-LGBTI hate crime issues (e.g. underreporting). The training sessions are delivered in cooperation with civil society organizations and academics.

Apart from hate crime coordinators, since 2017 there is also a new network of police coordinators working on combating cyberhate. There is one coordinator in each regional (voivodeship) headquarters and one in the Main Headquarters. According to the Ministry of Interior and Administration, the main reason and aim for that was “strengthening the efforts to combat hate crime in cybersphere”.<sup>44</sup> The setting up of this network is also a step in the good direction.

The network of human rights officers (plenipotentiaries for human rights) within the structures of the police are responsible for maintaining contacts with local LGBTI communities. The functions exist in each Voivodeship Headquarters of police, all police schools and the Central Investigation Bureau. They perform educational activities and work on prevention of hate crime, being also liaisons with “minority communities”. Theoretically, their duties include, inter alia, initiating cooperation and maintaining constant contact with institutions and NGOs that may assist the police in the protection of human rights.<sup>45</sup> In practice, only some officers engage in their human rights and community liaison tasks in a meaningful way. For example, neither Lambda Warsaw, not the KPH, has cooperated with the human rights advisor from the capital police office in the past three years.

## Assessment of Victim’s Needs

The procedure of assessment of special support and protection needs of a victim or witness of a crime was introduced into the Polish law as a part of implementation of the Victims’ Rights Directive through the

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<sup>43</sup> Letter from the Ministry of Interior and Administration from 25 April 2018.

<sup>44</sup> Letter from the Ministry of Interior and Administration from 25 April 2018.

<sup>45</sup> Letter from the Ministry of Interior and Administration from 25 April 2018.

Act on assistance for the victim and witness in 2014.<sup>46</sup> It introduces a special questionnaire to assess the needs of a victim or a witness in which it is stated that the fact that the crime was committed because of a person's sexual orientation or gender identity might justify the application of special measures. The problem with this tool is that there is not an obligation to actually use it in every case of hate crime.<sup>47</sup> In practice, NGOs do not have information how (or whether at all) the tool is used by the relevant authorities.

## Level of Social Acceptance/Hostility towards LGBT People

Regular research on the level of social acceptance or hostility towards gay men and lesbians are conducted by various institutions, and regular surveys on the social situation of LGBT people are conducted by LGBT NGOs. The police crime survey does not contain questions about hate crime, but the Commissioner for Human Rights conducted a hate crime victimization survey inclusive of anti-LGBT hate crimes in 2016.

Annual polls by the CBOS (Public Opinion Research Centre) show that attitudes of Poles towards gay men and lesbians are rather negative.<sup>48</sup> The last CBOS research on the attitudes towards homosexual people indicates that one in four respondents (24 per cent) does not accept gay men and lesbians (drop from 47 per cent in 2001), while 71 per cent of respondents accept homosexuality.<sup>49</sup> While, over the past few years, changes in some areas have become noticeable, indicating the increasing tolerance towards LG persons, most Poles (62 per cent) still believe that same-sex couples should not have the right to be visible in public. 30 per cent of Poles think that same-sex couples should have the right to get married, while 64 per cent oppose such view (this figure is relatively stable). Only one in ten (11 per cent) of respondents would allow adoption of children by

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<sup>46</sup> Act on assistance for a victim and a witness of 28 November 2014 (Journal of Laws 2015, item 21).

<sup>47</sup> Piotr Łada and Paweł Knut, 'Ochrona Prawna Osób LGBT - Ofiar Przestępstw [Legal Protection of LGBT People - Victims of Crimes]' in Paulina Górska and others, *Raport o Polsce [Report on Poland]* (KPH 2016) <<http://kph.org.pl/wp-content/uploads/2016/08/hnm-raport-pl-www.pdf>> accessed 12 September 2016; Paulina Górska and others, *Raport o Polsce [Report on Poland]* (KPH 2016) <<http://kph.org.pl/wp-content/uploads/2016/08/hnm-raport-pl-www.pdf>> accessed 12 September 2016.

<sup>48</sup> CBOS, 'Stosunek Polaków do gejów i lesbijek oraz związków partnerskich [The attitude of Poles towards gays and lesbians and civil partnerships]' (CBOS 2013) BS/24/2013 <[http://www.cbos.pl/SPISKOM.POL/2013/K\\_024\\_13.PDF](http://www.cbos.pl/SPISKOM.POL/2013/K_024_13.PDF)> accessed 2 June 2014; CBOS, 'Stosunek Do Osób o Orientacji Homoseksualnej i Związków Partnerskich' <[https://www.cbos.pl/SPISKOM.POL/2017/K\\_174\\_17.PDF](https://www.cbos.pl/SPISKOM.POL/2017/K_174_17.PDF)> accessed 5 May 2018.

<sup>49</sup> CBOS, 'Stosunek Do Osób o Orientacji Homoseksualnej i Związków Partnerskich' (n 48).



same-sex couples (84 per cent opposes it; these figures remain stable).<sup>50</sup>

Attitudes towards bisexual, trans and intersex people are rarely measured. One survey conducted by the Jagiellonian University in 2012 found that Poles feel the greatest social distance in relation to LGBT persons: homosexual men, transsexual people, bisexual people and homosexual women, as well as to a group of people with mental illnesses.<sup>51</sup>

Anti-LG hate speech is also widely accepted. For example, in research conducted by Bilewicz et. al., negative comments about LG people were accepted by Poles more often than statements about other minority groups.<sup>52</sup> Over one in three Poles think that the recent statement by the leader of the All-Polish Youth group (see ft. 73 above) is acceptable.<sup>53</sup>

The Polish Crime Research,<sup>54</sup> a large-scale survey carried out annually by the Police, does not contain questions about hate crime. It also does not provide information on the level of personal security reported by vulnerable groups, such as national, ethnic or religious minorities, people with disabilities or LGBT people.

The Commissioner for Human Rights carried out a large-scale research on hate crime in 2016. The report found that people belonging to national and ethnic minorities, people with disabilities and LGBT people felt less comfortable being outside in their neighbourhood in the evening than control group.<sup>55</sup> One in two LGBT people (51 per cent) declared avoiding some areas for their own safety (compared to 31.6 per cent in the control group).<sup>56</sup> LGBT people and people with

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<sup>50</sup> *ibid.*

<sup>51</sup> Patrycja Antosz, *Równe Traktowanie Standardem Dobrego Rządzenia. Raport z badań sondażowych [Equal Treatment as a Standard of Good Governance. Report of the survey]* (Jarosław Górniak ed, 2012) 5 <[http://www.spoleczenstwoobywatelskie.gov.pl/sites/default/files/rowne\\_traktowanie\\_standardem\\_dobrego\\_rzadzenia\\_-\\_raport\\_z\\_badan\\_ilosowych\\_ost\\_0\\_0.pdf](http://www.spoleczenstwoobywatelskie.gov.pl/sites/default/files/rowne_traktowanie_standardem_dobrego_rzadzenia_-_raport_z_badan_ilosowych_ost_0_0.pdf)>.

<sup>52</sup> Michał Bilewicz and others, *Mowa nienawiści. Raport z badań sondażowych [Hate speech. Report from survey]* (Fundacja im Stefana Batorego 2014) <[http://www.ngofund.org.pl/wp-content/uploads/2014/06/raport\\_final\\_poj.pdf](http://www.ngofund.org.pl/wp-content/uploads/2014/06/raport_final_poj.pdf)>.

<sup>53</sup> *ibid.*

<sup>54</sup> Policja, 'Polskie Badanie Przestępczości 2017'.

<sup>55</sup> Anna Mazurczak and others, *Przestępstwa Motywowane Uprzedzeniami Względem Osób Starszych, Osób z Niepełnosprawnościami, Osób Homoseksualnych i Transpłciowych. Analiza i Zalecenia [Crimes Motivated by Prejudice against the Elderly, People with Disabilities, Homosexual and Transgender Persons. Analysis and Recommendations]* (Biuro Rzecznika Praw Obywatelskich 2017) 28 <<https://www.rpo.gov.pl/pl/content/raport-przestepstwa-motywowane-uprzedzeniami-analiza-i-zalecenia>> accessed 25 December 2017.

<sup>56</sup> *ibid.* 29.



diverse national and ethnic background declared lower trust in the Police than control group.<sup>57</sup>

## Victimization Surveys

LGBT organizations carry out regular research on the social situation of LGBT persons in Poland. Consecutive reports point on to the high level of anti-LGBT victimization.<sup>58</sup> For example, according to the most recent report “Social situation of LGBT people 2015-2016”, nearly 70 per cent LGBT people have experienced some type of bias motivated behaviour over the past two years. The most frequent type of violence that LGBT people encounter is verbal abuse (63.72 per cent), threats (33.96 per cent) and vandalism (27.27 per cent). As much as 14.11 per cent of LGBT people taking part in the survey experienced sexual violence, and 12.84 percent experienced physical violence.<sup>59</sup>

Victimization surveys found that hate incidents targeting LGBT people have negative effects on the victims.<sup>60</sup> For example, the recent study commissioned by the Office of the Human Rights Commissioner found that the psychological and social consequences for the respondents (especially LGBT persons and people of diverse ethnic or national origin) who have experienced bias-motivated crimes are significantly more serious than the consequences of similar crimes not motivated by bias. Observed differences are above all a greater severity of PTSD symptoms, lower support received by people belonging to vulnerable groups and less public recognition of harm suffered by victims of bias-motivated crimes.<sup>61</sup>

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<sup>57</sup> *ibid* 30.

<sup>58</sup> Marta Abramowicz (ed), *Situation of Bisexual and Homosexual Persons in Poland. 2005 and 2006 Report* (Kampania Przeciwko Homofobii, Lambda Warszawa 2007) <[http://kph.org.pl/images/stories/raporty/raport\\_homofobia\\_2007\\_EN\\_screen.pdf](http://kph.org.pl/images/stories/raporty/raport_homofobia_2007_EN_screen.pdf)> accessed 4 October 2014; Mirosława Makuchowska and Michał Pawłega (eds), *Situation of LGBT Persons in Poland. 2010 and 2011 Report* (KPH, LW, Trans-Fuzja 2012) <[http://lambdawarszawa.org/wp-content/uploads/2015/08/2bdac200d225193bdff8440f2fab798c\\_report\\_LGBT\\_survey\\_2010\\_2011.pdf](http://lambdawarszawa.org/wp-content/uploads/2015/08/2bdac200d225193bdff8440f2fab798c_report_LGBT_survey_2010_2011.pdf)> accessed 25 October 2016; Świder and Winiewski (n 28); Mirosława Makuchowska (ed), *Przemoc motywowana homofobią. Raport 2011 [Violence motivated by homophobia. Report 2011]* (Kampania Przeciwko Homofobii 2011) <[http://www.kph.org.pl/publikacje/raport\\_przemoc.pdf](http://www.kph.org.pl/publikacje/raport_przemoc.pdf)> accessed 18 March 2014; Górńska and others (n 47); Mirosława Makuchowska and Agata Chaber (eds), *Różowa księga nienawiści: Przemoc wobec osób LGBTI w Polsce. Raport 2014 [Pink Book of Hate: Violence against LGBTI people in Poland. Report 2014]* (Kampania Przeciwko Homofobii 2014) <[http://www.kph.org.pl/publikacje/raport\\_rozowa\\_ksiega\\_nienawisci\\_2014.pdf](http://www.kph.org.pl/publikacje/raport_rozowa_ksiega_nienawisci_2014.pdf)> accessed 18 March 2015.

<sup>59</sup> Świder and Winiewski (n 28).

<sup>60</sup> Górńska and others (n 47); Świder and Winiewski (n 28); Mazurczak and others (n 55).

<sup>61</sup> Mazurczak and others (n 55).

## Hate Speech and Cyberhate

Homophobic and transphobic hate speech is prevalent. The “Report on the social situation of LGBT people 2015-2016” shows that 63.7 per cent of respondents experienced verbal violence and 34 per cent experienced threats.<sup>62</sup> 7.3 per cent of these attacks happened online.<sup>63</sup> According to the recent survey by the Centre for Research on Prejudice of the University of Warsaw among adult Poles, one in four (25 per cent) of male and one in three (35 per cent) of female respondents said they would accept a transgender person as a family member. Slightly more favourable, but still rather negative, were attitudes towards gay men, with 30 per cent of men and 47 per cent of women accepting them as family members. Attitudes towards lesbians as family members were more positive (and 55 per cent).<sup>64</sup>

As mentioned above, hate speech laws in Poland do not cover the anti-LGBT motivation. As a result, behaviours such as incitement to hatred or publicly offending a group of people because of their SOGI are not criminalized in Poland. Sex characteristics have never been considered as a hate speech ground in Poland.

While cases of racist hate speech are prosecuted *ex officio*, general regulations (art. 212 CrC and art. 216 CrC) applicable to anti-LGBT hate speech shift the responsibility for finding the author of the comment onto the victim. Also, the insignificant severity of punishments provided by these articles have impact on the weakness of the protection.

Victims of cyberhate are in particularly difficult situation. Finding the IP address which would allow to identify the offender is not easy and often depends on the willingness of the administrators who have access to such information. Even if such data are collected, one cannot be sure of winning the case, as the IP address is not a sufficient piece of evidence which could prove that the computer is owned or used by the perpetrator.

Considering the above, there is evidence that the general provisions do not protect LGBT people from experiencing hate speech both on- and off-line.

### **Case: Homophobic insults sent by email**

*The KPH received an illegal insult in an email. The private accusation was filed in. It ended in court in which the accused*

<sup>62</sup> Świder and Winiewski (n 28).

<sup>63</sup> *ibid.*

<sup>64</sup> Mikołaj Winiewski and others, *Mowa Nienawiści, Mowa Pogardy. Raport z Badania Przemocy Werbalnej Wobec Grup Mniejszościowych* (2016) 75–77 <[http://www.batory.org.pl/upload/files/pdf/MOWA\\_NIENAWISCI\\_MOWA\\_POGAR\\_DY\\_INTERNET.pdf](http://www.batory.org.pl/upload/files/pdf/MOWA_NIENAWISCI_MOWA_POGAR_DY_INTERNET.pdf)> accessed 12 August 2017.

*person defended himself saying that there are many people who can use his computer, including his son's friends. The court found him not guilty because there wasn't any proof that he personally sent the email.*

## Awareness Raising

There are no specific measures taken by public authorities to raise awareness of hate crime and hate speech. Most efforts to raise awareness of hate speech and violence targeting LGBT people have been on the part of the NGOs, supported by the Commissioner for Human Rights, rather than a result of a coordinated national policy. State and local officials rarely engage in campaigns promoting LGBT rights.

### **Case: Celebration of the IDAHOBIT by the Commissioner for Human Rights**

*In 2017, a representative of the Polish Commissioner for Human Rights spoke about domestic violence against LGBT people at the conference organized by Lambda Warsaw on IDAHOBIT.<sup>65</sup>*

*For the 2018 IDAHOBIT celebrations, the Commissioner for Human Rights published an article referencing the low score of Poland (18/100) in the Rainbow Europe map.<sup>66</sup>*

### **Case: Municipal campaign against anti-LGBT domestic violence**

*In 2017, the municipality in Warsaw co-financed the social campaign "If you hear this, if you say this" organized by Lambda Warsaw. The campaign aimed at raising awareness about domestic violence against LGBT people and encouraging victims, witnesses and perpetrators to report and use support.<sup>67</sup>*

## Political Hate Speech

There is also no guidance to public officials and state representatives to promote tolerance towards LGBT persons whenever they engage

<sup>65</sup> Krzysztof Kliszczyński, "Jeśli to Słyszysz, Jeśli to Mówisz": Raport z Otwarcia Kampanii' <<https://drive.google.com/file/d/OB-MOIV58Ues6SGd0LTFSNHZMNVU/view>> accessed 2 February 2018.

<sup>66</sup> RPO, '17 maja - Międzynarodowy Dzień Przeciw Homofobii i Transfobii' (Rzecznik Praw Obywatelskich, 17 May 2018) <<https://www.rpo.gov.pl/pl/content/17-maja-miedzynarodowy-dzien-przeciw-homofobii-i-transfobii>> accessed 2 July 2018.

<sup>67</sup> Karolina Więckiewicz and Piotr Godzisz, *Hot Line: Improving the Recording and Reporting of Anti-LGBT Hate Crimes Project Report* (Warsaw: Lambda Warsaw, 2018), [https://www.ilga-europe.org/sites/default/files/pl\\_-\\_hotline\\_advocacyreport\\_eng.pdf](https://www.ilga-europe.org/sites/default/files/pl_-_hotline_advocacyreport_eng.pdf).

with civil society, media and sports organisations, political organizations and religious communities.

There have been incidents of homophobic and transphobic comments by MPs both in the previous (2011-2015) and current term of the parliament. Derogatory statements were made by MPs from both the ruling party and opposition parties.

**Case: Homophobic and transphobic statements by Krystyna Pawłowicz MP**

*One of the examples of derogatory statements made by a prominent politician and lack of proper reaction are statements made by an MP Krystyna Pawłowicz MP in both the previous and current term of the parliament. In 2013, during the parliamentary debate before the vote on draft acts on partnerships, she called same-sex relationships “barren unions that serve to satisfy sex drive” and said that such relationships are “contrary to nature”.<sup>68</sup> At another occasion, she said that the trans MP Anna Grodzka “has a face of a boxer”.<sup>69</sup> Following the comments, she received a warning from the Sejm ethics committee. Despite the warning, the MP continues to utter derogatory statements about homosexuality. Most recently she did it in the context of a suicide of a teenager who was a victim of homophobic bullying (see the section on education).*

**Case: Homophobic statements by Robert Winnicki MP**

*Following the shooting at the night club in Orlando, Robert Winnicki, the leader of the nationalist Ruch Narodowy party, tweeted: “A slaughter in a homo-club that is a “free zone”. #homosexual #pacifism #Muslim-immigrant Left wing - everything that you like. #Orlando”.<sup>70</sup> He also went on record saying “I do not blame those people who, having homosexual tendencies, try to fight them. But fagots - activists who seek the privileges for homosexual relationships and adoption of children, must be fought.”<sup>71</sup> In 2016, Winnicki invited Paul Cameron, whose Family Research Institute is*

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<sup>68</sup> wprost.pl, ‘Pawłowicz odpowie przed komisją za “jałowe związki”?’

(WPROST.pl, 4 February 2013)

<<https://www.wprost.pl/kraj/386781/pawlowicz-odpowie-przed-komisja-za-jalowe-zwiazki.html>> accessed 25 July 2018.

<sup>69</sup> ibid.

<sup>70</sup> Robert Winnicki, ‘Rzeź w homo-klubie będącym “strefą wolną od broni”.

#homoseksualiści #pacyfizm #muzułmański-imigrant Lewico-wszystko co lubisz.

#Orlando’ (@robertwinnicki, 13 June 2016)

<<https://twitter.com/robertwinnicki/status/742283942926155776>> accessed 2 July 2018.

<sup>71</sup> Wojciech Szacki, ‘Robert Winnicki – lider Wszechpolaków’ (21 April 2016)

<<https://www.polityka.pl/tygodnikpolityka/kraj/1532783,1,robert-winnicki-lider-wszechpolakow.read>> accessed 2 July 2018.

*listed by the Southern Poverty Law Centre as a hate group<sup>72</sup> to speak at the Polish Parliament.<sup>73</sup>*

## LGBT Persons in Prisons

The Executive Criminal Code contains only general references to the obligation of humane treatment and dignity of prisoners. But it does not refer to sexual orientation or gender identity as grounds for possible discrimination. Similarly, in case of Prison Service Code of Ethics issued by the Director General of Prison Service the officers and employees shall maintain a humane attitude towards the prisoners, respect for human rights and dignity, and respect the principle of equal treatment. Due to the fact that SOGI are, in particular in the prison environment, a taboo subject, prison units do not send any signals of the appropriate or inappropriate treatment of LGBT prisoners.

There are no specific measures regarding LGBT prisoners. In fact - according to the organizations' experience and information from the Prison Services<sup>74</sup> it seems that SOGI are not of any special interest within the system. These characteristics are not perceived as important in terms of establishing specific measures or procedures.

Theoretically, all convicted persons entitled to require the administration of a correctional facility to take appropriate steps to ensure their personal safety while serving the sentence. In practice, the decision whether and how to approach the question of safety of LGBT prisoners depends on the head of the specific prison or detention centre.

There is a practice of allocating prisoners in such a way that eliminates risk of conflicts and violence. It means that if there is any threat of "antagonist views" prisoners are not allocated together. "Sensitive" factors are also taken into consideration - in that religion or "views". According to Prison Services, SOGI seem to be a part of that group of factors. If it is impossible for safety reasons to place LGBT detainees with other people, they might be placed in solitary confinement.<sup>75</sup> The Prison Services did not provide information on how many LGBT inmates are placed in solitary confinement. The use of this method is however, worrisome, as the institutional segregation and lack of human contact may harm the mental health of LGBT inmates who endure it, and the consequences of prolonged isolation outweigh any perceived benefits regarding protection. According to the UN Special

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<sup>72</sup> Evelyn Schlatter, '18 Anti-Gay Groups and Their Propaganda' <<https://www.splcenter.org/fighting-hate/intelligence-report/2010/18-anti-gay-groups-and-their-propaganda>> accessed 2 July 2018.

<sup>73</sup> Alicja Karasińska, 'Paul Cameron w Sejmie. Żenujące Połączenie Homofobii i Pseudonauki' (*Polityka*, 11 October 2016).

<sup>74</sup> Meeting of 19 June 2018 with the Plenipotentiary for Human Rights of the Prison Services.

<sup>75</sup> Ibid.

Rapporteur on torture, solitary confinement should be banned “except in very exceptional circumstances and for as short a time as possible, with an absolute prohibition in the case of juveniles and people with mental disabilities”.<sup>76</sup>

Trans prisoners are not given the possibility to be allocated to either a male or female facility based on their self-determined gender identity. The procedure of allocating prisoners is done only on basis of the personal documents. Even in a situation in which a person in undergoing transition resulting in her social functioning and appearance being not “in accordance” with the gender marker in their documents it is still not possible to allocate such person in facility with respect to their declared gender. The only exception from that rule is when a person has a judgment by the court indicating that the procedure of gender reassignment has been completed. The Prison Services did not provide information on how many trans people are currently imprisoned in Poland.

**Case: Respect for the declared gender in prisons**

*The Trans-Fuzja foundation, Lambda Warsaw and the KPH have received several complaints regarding maltreatment of trans prisoners by allocating them without respect to their gender over the last years.*

The function of the Plenipotentiary of the Main Chief of Prison Services for Human Rights and Equal Treatment was established in 2017.<sup>77</sup> While this is a positive step, it should be noted that this function is not a full-time position, but additional tasks are put on a person doing another job as well.

There are no special efforts within the prison system to monitor the situation of LGBT prisoners. There is no separate system for official complaints on discrimination or hate-motivated violence that LGBT prisoners could use. The general system allows prisoners to complain to various institutions, including the prison administration, heads of organizational units of the Prison Services, the Commissioner for Human Rights and the Plenipotentiary. While the Plenipotentiary declares that there have been efforts to inform every prisoner about the ways of reporting cases, only a handful of reports were filed, and none resulted in the confirmation of discriminatory practices.<sup>78</sup> The lack of cases seems to be read by the Prison Service as a sign that

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<sup>76</sup> United Nations, ‘Solitary Confinement Should Be Banned in Most Cases, UN Expert Says’ (*UN News*, 18 October 2011) <<https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>> accessed 25 July 2018.

<sup>77</sup> See the website at <https://www.sw.gov.pl/strona/pelnomocnik-dyrektora-generalnego-sluzby-wieziennej-ds-ochrony-praw-czlowieka-i-rownego-traktowania>.

<sup>78</sup> Meeting of 19 June 2018 with the Plenipotentiary for Human Rights of the Prison Services. Letter from Central Prison Service Management from 25 April 2018.

discrimination on the ground of SOGI does not exist or is of a “incidental” nature.<sup>79</sup>

**Case: Complaints by LGBT prisoners**

*According to the information provided by the Prison Services in the response to the freedom of information request, there were four cases concerning discriminatory practices against LGBT prisoners in 2016.<sup>80</sup> Two concerned discriminatory practices by another prisoner and two concerned violations by prison staff officials.*

There are no training curricula and codes for prison staff which focus on, or even explicitly mention LGBT issues. Rather, documents speak of ethics, human rights and discrimination in general.<sup>81</sup> The Prison Service argues that within the framework of the training of penitentiary staff (psychologists and educators) knowledge about discrimination based on SOGI is disseminated.<sup>82</sup> Information about diversity in sex characteristics is not included. According to the Prison Service, officials are taught about international standards regarding working with prisoners and that as a part of that there are “elements of sensitization of the staff in terms of sexual minorities placed in detention”. It is difficult to assess, however, the amount and quality of knowledge that is disseminated during those trainings, as the content of the training is not monitored.<sup>83</sup>

## Recommendations

- 1) Amending Polish Criminal Code in the way that would penalize hate speech and hate crimes based on sexual orientation and gender identity.
- 2) Introducing an effective system of data collection that would obligate law enforcement agencies to recognize homophobic, bifobic and transphobic motives of a crime.
- 3) Amending the national legislation in way that would effectively implement the guaranties arising from the Victims’ Rights Directive, particularly by establishing the system of obligatory assessment of individual needs of victims of homophobic, bifobic and transphobic hate crimes that would be integrated with the system of victims’ support and protection.

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<sup>79</sup> Meeting of 19 June 2018 with the Plenipotentiary for Human Rights of the Prison Services.

<sup>80</sup> Letter from Central Prison Service Management from 25 April 2018.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Meeting on 19 June 2018 with the Plenipotentiary for Human Rights of the Prison Services.



## II. Freedom of Association

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*Karolina Gierdal*

- Organizations declaring acting for benefit of LGBT persons, can register on an equal footing with other organizations.
- Theoretically, the legal provisions allow public financing of activities of all NGOs without discrimination. Since the election in 2015, the situation changed dramatically to worse. On September 2017 the Act on the National Freedom Institute – Centre for the Development of Civil Society of Poland was adopted. The Institute is not free from government influence and in practice its structure determines that the distribution of most public funds is controlled directly by the government authorities.
- In most areas of public life, the State does not see the need to take any initiatives on LGBT issues. Until 2015 LGBT organizations were sometimes involved in the development and implementation of public policies, including consultations on legal measures that could have an impact on the human rights of LGBT persons. Since the general election in 2015, this involvement has come to an end. It reflects the general change of the approach to the independent NGOs presented by the decision makers.
- The use of the instrument of public consultations was significantly limited after 2015. It is the practice of current government to propose draft versions of the bills (prepared by government) through the group of MPs just to avoid the necessity of public consultations and other legal requirements. When public consultations do take place, they are not conducted according to regulations and are fictitious.
- When it comes to national human rights institutions (the Commissioner for Human Rights (RPO) and the Government Plenipotentiary for Civil Society and Equal Treatment (PRT)), since the change of government in 2015, the LGBTI rights issues lie only in the area of the RPO activities.
- The only figures interested in cooperation with LGBT NGOs on the national level are the ones representing liberal opposition parties. More comprehensive and fruitful cooperation between LGBT NGOs and authorities exists on the local level, in cases when the local authorities are not connected directly or indirectly with Law and Justice party.
- LGBT organizations are in a permanent contact with media representatives dedicated to LGBT issues. Information on the activities of these organizations appears regularly in the mainstream press in the country.
- Defenders of human rights of lesbian, gay, bisexual and transgender persons, whether they are associated formally in an organization, as independent activists or just participating in events aimed at protection of LGBTI rights, do not receive any special protection from the state against hostility and



aggression. They can only rely on general provisions contained in acts of national law.

- State involvement in the protection against homophobic, biphobic or transphobic hostility and aggression is still practically limited to securing equality marches.

## Right to Register the Organization: Practical Obstacles

In principle, organizations declaring acting for LGBT persons, can register on an equal footing with other organizations. According to Polish law organizations can be established in two alternative forms: as associations or foundations.

Association is an organization established by group of people (members) that have a common interest or activity. They are able to freely decide about the structure, goals, objectives of the association and are not, theoretically, limited by restrictions based on public health, morality or public order. However, the registration may be denied by the court should the provisions in the Articles of Association not comply with the provisions of Polish law (Associations Act, art. 16.). Also the doctrine of law stipulates that the AoA cannot violate particular norms, as well as general legal principles and fundamental moral values<sup>84</sup>.

In contrast, foundation is established by a founder, who also determines its AoA. The Act on Foundations stipulates that a foundation may be established for the realization of socially or economically useful purposes that must be consistent with the basic interests of the state, including but not limited to healthcare, development of the economy and science, education, culture and art, social services, protection of the environment and historical preservation (art. 1 Foundations Act).

The registration process of organizations (especially associations), in general, is unreasonably prolonged due to procedural difficulties. In January 2017 the RPO addressed this issue with a letter to the Government Plenipotentiary for Civil Society and Equal Treatment. He pointed out that some of the practices of registration authorities often make the registration process unreasonably difficult. One of the basic problems is the practice of prolonging registration proceedings, e.g. by repeatedly calling for changes in the AoA or by prolonged inaction. The RPO also stated, referring to the received complaints from

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<sup>84</sup> Agnieszka Rzetecka-Gil. 'Art. 16'. in: *Prawo o stowarzyszeniach. Komentarz [Association act. Legal commentary]*, System Informacji Prawnej LEX, 2017.

associations, that in practice the associations are sometimes obliged to meet requirements that are not specified in the law itself<sup>85</sup>.

In his reply, the Plenipotentiary indicated that, although he sees the necessity of legislative actions in this respect, the problem lies more within the practice of law than in the law itself. The Plenipotentiary also stated that individual examples of difficulties with the registration of the association do not indicate unambiguously that the scale and importance of the presented problem occurs on a nationwide basis<sup>86</sup>.

It cannot be unambiguously determined whether prolonged registration process affects disproportionately more the LGBTI human rights organizations. However, there is at least one case where the discriminatory factor could have played an important role in the refusal to register changes in the statute of the foundation established to protect the rights of transgender persons.

**Case: Refusal to register changes in the statute of the transgender foundation**

*In 2017 the district court in Poznań refused to register the 'Trans-action foundation' which main goal was to provide help to transgender persons. The founders of the foundation, indicated (among the objectives of its activity) the integration of the transgender community, sensitizing the society to the problems of transgender persons, preventing discrimination, promoting equality, acceptance and tolerance. Trans-action foundation was also supposed to lead support groups, psychological consultations and legal advice for people seeking a gender correction. In the justification for refusal of registration, the Court pointed out that "a situation is possible in which the foundation's objective - though socially useful - will not fall under the category of objectives consistent with the basic interests of the state"<sup>87</sup>. The foundation decided against filing an appeal. However, some of the founders established another foundation - 'Acceptance' that included in its AoA similar objectives, previously questioned by the court in 'foundation Trans-action' case. The court, again, refused to register the foundation based on the same arguments and registered it only after the questioned objectives were removed from the AoA. The Acceptance foundation, represented this time by KPH lawyers,*

<sup>85</sup> RPO, 'Rzecznik w sprawie nieprawidłowości dotyczących rejestracji stowarzyszeń w Krajowym Rejestrze Sądowym' (16 January 2017) <https://www.rpo.gov.pl/pl/content/rzecznik-w-sprawie-nieprawidlowosci-dotyczacych-rejestracji-stowarzyszen-w-krs>, accessed 28 July 2018

<sup>86</sup> RPO, 'Odpowiedź Pełnomocnika Rządu do Spraw Społeczeństwa Obywatelskiego na temat problemów z rejestracją stowarzyszeń w KRS' (5 May 2017) <https://www.rpo.gov.pl/pl/content/odpowied%C5%BA-pe%C5%82nomocnika-rz%C4%85du-do-spraw-spo%C5%82ecze%C5%84stwa-obywatelskiego-na-temat-problem%C3%B3w-z-rejestracj%C4%85>, accessed 28 July 2018

<sup>87</sup> District Court in Poznan Nowe Miasto i Wilda , decision of March 22<sup>nd</sup> 2017, (case file no. PO.VIII.Ns-Rej. KRS 4941/17/900),

*changed its AoA objectives (by adding references to transgender issues) and filed for an amendment to the court. After the third refusal and filing the appeal, the court eventually decided to change the decision and register in the foundation's AoA objectives that were literally referring to transgender persons<sup>88</sup>.*

## Shrinking Opportunities to Access to Public Funding

Theoretically, the legal provisions allow public financing of activities of all NGOs without discrimination. In the first report from 2012 it was stated that in practice LGBT organizations sometimes met with a refusal to be granted financing<sup>89</sup> and they were of the opinion that these decisions were motivated by the unwillingness of the decision-makers to favour this type of organization. Also, the activities run by such organizations were rarely in the priority list of local and central governments and were not first in line to be granted funding. It was, however, indicated there were cases of financing the activities of LGBT organizations from public funds.

Since the election in 2015, the situation changed dramatically to worse. Media reported that many organizations that used to be publicly financed did not receive any funding without any reasonable explanation. At the same time, organizations associated with the current government or at least holding right-wing views, received public financing<sup>90</sup>. National Federation of Polish NGOs published a report that documented irregularities within the relations between government and NGOs. Between November 2015 and February 2017,

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<sup>88</sup> District Court in Poznan Nowe Miasto I Wilda, decision of June 11<sup>th</sup> 2018, (case file no. PO.VIII.Ns-Rej. KRS 013360/18/474),

<sup>89</sup> Knut, Pawel, Zofia Jablonska (co-author), *Prawa Osób LGBT w Polsce. Raport z badań nad wdrażaniem Zalecenia CM/Rec (2010)5 Komitetu Ministrów dla Państw Członkowskich w zakresie środków zwalczania dyskryminacji opartej na orientacji seksualnej lub tożsamości płciowej (Rights of the LGBT Persons in Poland. Report on the Implementation of the Recommendation CM/Rec (2010)5 of the Committee of Ministers of the Council of Europe on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity by Poland)*, Campaign Against Homophobia, 2012, <https://tinyurl.com/k748or5>, pp. 183, accessed 28 July 2018,

<sup>90</sup> Anton Ambroziak, 'Ziobro odmawia dotacji Centrum Praw Kobiet. Bo „zawęża pomoc tylko do kobiet”' (oko.press 15 January 2017) <https://oko.press/centrum-praw-kobiet-znow-srodkow-minister-dofinansuje-caritas/>, accessed 27 July 2018, Ewa Siedlecka, 'Trzeci sektor pod nadzór rządu. PiS ma pomysł, jak kontrolować NGO-sy' (Wyborcza, 22 November 2016), <http://wyborcza.pl/7,75398,21010833,trzeci-sektor-pod-nadzor-rzadu-pis-ma-pomysl-jak-kontrolowac.html>, accessed 28 July 2018, Magdalena Chrzczonowicz, 'Ministerstwo rozdaje po uważaniu, zabiera wbrew regulaminowi. Organizacje pozarządowe tracą grunt' (oko.press, 17 February 2017) <https://oko.press/ministerstwo-rozdaje-uwazaniu-zabiera-wbrew-regulaminowi-organizacje-pozarządowe-traca-grunt/>, Anton Ambroziak, 'Rafalska zabiera pieniądze „obcym” NGO. Oddaje je „swoim” na promocję „rodziny” i „ojczyzny” (oko.press, 24 April 2017), <https://oko.press/rafalska-zabiera-obcym-sedziom-oddaje-je-swoim-promocje-rodziny-ojczyzny/> accessed 28 July 2018.

the Federation registered 22 irregularities regarding public funding of NGOs<sup>91</sup>. Among them there was also one LGBT specific case, where funding was taken away from the 'Autonomy' foundation. This decision was a reaction to the letters from MPs who were concerned about foundation's objectives, which included fighting with intolerance based on sexual orientation.

**Case: Taking away the public funding from NGO acting for benefit of LGBT persons**

*Ministry of Family, Labour and Social Policy, after one-day "monitoring" terminated with the immediate effect contract with Autonomy Foundation for funding one of Foundation's projects. The "monitoring" had no legal or contractual basis. It was carried out soon after Ministry received two Parliamentary Questions from the MPs. They formulated allegations that the financed project was "ideological" and that the Foundation's objectives, established in its statute, "clearly refer to views held by LGBT people" and "fighting with intolerance based on sexual orientation"<sup>92</sup>.*

On September 2017 the Act on the National Freedom Institute – Centre for the Development of Civil Society of Poland was adopted. It radically changed the rules regarding, inter alia, public financing of NGOs. The act was criticized by the RPO, NGOs and the independent media<sup>93</sup>.

It has established a new institution at the central level – National Freedom Institute - Centre for the Development of Civil Society of Poland, that is supposed to be responsible for supporting the development of civil society and public benefit activity and volunteer work in Poland. The Institute became the designated allocator of public funds to non – governmental organizations and the main distributor of those funds.

The Institute is not free from government influence. It is supervised by the Chair of the Committee, who is a member of the Council of

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<sup>91</sup> Katarzyna Kiełbiewska, Kinga Polubicka and Adela Gąsiorowska, *'Repozytorium Ogólnopolskiej Federacji Organizacji Pozarządowych. Raport podsumowujący XI 2015–XII 2017 [National Federation of Polish NGOs's repository. Summarizing report XI.2015 – XII.2017]'*, <http://ofop.eu/aktualnosci/naruszenia-przez-polski-rzad-zasady-pomocniczosci-i-partnerstwa-we-wspolpracy-z-organiza>, accessed 28 July 2018

<sup>92</sup> *ibid.*

<sup>93</sup> RPO, Rzecznik Praw Obywatelskich przedstawia opinie o rządowym projekcie ustawy o Narodowym Instytucie Wolności – Centrum Rozwoju Społeczeństwa Obywatelskiego (14 July 2017), <https://www.rpo.gov.pl/pl/content/rzecznik-praw-obywatelskich-przedstawia-opinie-o-rzadowym-projekcie-ustawy-o-narodowym-instytucie>, Anton Ambroziak, '100 mln zł na organizacje pozarządowe pod kontrolę rządu. PiS przyspiesza z Instytutem Wolności' (oko.press, 18 September 2017) <https://oko.press/100-mln-zl-organizacje-pozarządowe-kontrola-rządu-pis-przyspiesza-instytutem-wolności/>, accessed 28 July 2018

Ministers. The Chair has an enormous impact and exercises control over the key functions in the Institute. The Chair appoints and dismisses the Director of the Institute, Director's deputies and appoints five members of the Board from nominees proposed by NGOs. Among other things, the Chair determines Institute's Charter, approves annual report and annual financial statements.

In practice, this structure determines that the distribution of most public funds is controlled directly by the government authorities.

In its Preamble the Act refers to the “foundations for national and local cultures”, “[citizens'] commitment to freedom and Christianity”, the “development of mature patriotism” and also specifies that the Polish state will strive to “extend special protection to small organizations that foster community attitudes and nurture local heritage”. The Article 24 par 3 (4) states that the National Institute's tasks shall also include “upholding and disseminating culture and the national and local traditions that are rooted in Christian heritage, nurturing Polishness and developing national, civic and cultural awareness as well as social solidarity and sensitivity”. This means that the scope of the Act is limited to one religious heritage and national origin, and almost completely dismiss the concept of tolerance, universal values, human rights, equal treatment and the necessity to support minorities, including LGBT persons.

It should be noted that the distribution of the funds will be based on civil society development programmes, established by the Council of Ministers resolution. Within that programme, the Director of the National Institute determines rules of the tender. This can be done arbitrary, since there are no clear provisions on the criteria or standards that must be included in the rules, especially it is not necessary to adopt any non-discrimination clause.

According to the media, the public funding is currently frozen, at least until the end of 2018<sup>94</sup>. It is unclear whether the Institute actually works and what are the actions that it is currently taking<sup>95</sup>.

However, the NGOs that are currently vilified by the Polish government, noted an increase in the funding they receive from the so – called “1%”. NGOs that hold a status of public interest organization may be chosen by the taxpayer as the beneficiary of 1% of taxpayer's income

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<sup>94</sup> Rafał Kowalski, 'Kto będzie operatorem funduszy norweskich? (ngo.pl, 25 October 2017), <http://wiadomosci.ngo.pl/wiadomosc/2127697.html>, accessed 28 July 2018

<sup>95</sup> Anton Ambroziak, Prawie 400 mln na Narodowy Instytut Wolności. Rząd bez konsultacji uruchamia nowe programy i remontuje siedzibę Instytutu (oko.press 31 May 2018), <https://oko.press/prawie-400-mln-na-narodowy-instytut-wolnosci-rzad-bez-konsultacji-uruchamia-nowe-programy-i-remontuje-siedzibe-instytutu/>, accessed 28 July 2018

tax. For example, in 2016 KPH received c.a. 70.000 PLN more than in 2015 from this source<sup>96</sup>.

Although no central funding is now provided to LGBT organizations, it is still possible to receive funding from regional or local authorities, provided they are not associated with Law and Justice or other right-wing political option.

#### **Case: Local funding for LGBT NGOs**

*The project of Lambda Warsaw and the Association for Legal Intervention 'Together against discrimination. Counselling for groups particularly at risk of discrimination' is co-financed by the Capital City of Warsaw. The project offers psychological and legal help for people experiencing discrimination.*

As a side note it also needs to be mentioned that some of the organizations working for the benefit of LGBTI persons (for instance KPH), refrain from financing from the public sources to remain fully independent from the Polish authorities.

## Shrinking Public Space for LGBT NGOs

In most areas of public life, the State does not see the need to take any initiatives on LGBT issues. However, until 2015 LGBT organizations were sometimes involved in the development and implementation of public policies, including consultations on legal measures that could have an impact on the human rights of LGBT persons. Since the general election in 2015, this involvement has come to an end. KPH and Lambda Warsaw are of the opinion that this shift is not solely LGBT specific. It reflects the general change of the approach to the independent NGOs presented by the decision makers. The governmental policy toward NGO sector can be described as aimed at limiting the cooperation with the organisations, whose activities are not in line with the current political agenda.

## Public Consultations

The use of the instrument of public consultations was significantly limited after 2015. Lack of government consultations with NGOs, LGBT organizations included, are visible at many levels.

It should be emphasized that involvement of NGOs in the process of consultations on legal measures are legally possible if the bill is prepared by the government itself. If the bill is proposed by the

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<sup>96</sup> Information on 1% of legal persons income tax transferred to public benefit organizations in 2016, [https://www.finanse.mf.gov.pl/pl/pit/statystyki/-/document\\_library\\_display/8Wpj/view/6084784](https://www.finanse.mf.gov.pl/pl/pit/statystyki/-/document_library_display/8Wpj/view/6084784), accessed 28 July 2018

Parliament, the consultations are not required. It is the practice of current government to propose draft versions of the bills (prepared by government) through the group of MPs just to avoid the necessity of public consultations and other legal requirements<sup>97</sup>. Since 2015, when a bill is prepared by the government, NGOs specializing in the scope of the bill are often not invited to be involved in consultations and must acquire such information on their own. Public consultations are also set up to last for a very short time, in many cases even below the absolute minimum that is required by law – for just 14 days. At the same time, only the first draft of the bill is open to consultations. The governmental bodies often do not respond to opinions issued by NGOs and other parties involved in public consultations<sup>98</sup>.

**Case: The lack of consultation of changes in the Act on public benefit and volunteer work**

*The governmental bill regarding changes in the Act on public benefit and volunteer work from April 2018 was not consulted at all. It was proceeded in the special procedure, which do not require any consultations, without any legal justification except for the fact that the Prime Minister has agreed to this procedure. The bill will amend the Act by giving the Prime Minister right to designate tasks to NGOs and other public benefit organizations in a special procedure, in cases of, inter alia, important public or social interest<sup>99</sup>.*

**Case: the adoption of Act on transparency in public life**

<sup>97</sup> Piotr Pacewicz and Filip Konopczyński, 'Prawo i Skróty. Rewolucja legislacyjna "dobrej zmiany"', (oko.press 31 July 2016), <https://oko.press/prawo-skroty-rewolucja-legislacyjna-czasach-dobrej-zmiany/>, accessed 21 July 2018

<sup>98</sup> Obywatelskie Forum Legislacji przy Fundacji im. Stefana Batorego, 'Jakość stanowienia prawa w pierwszym roku rządów Prawa i Sprawiedliwości oraz IX Komunikat Obywatelskiego Forum Legislacji o jakości procesu legislacyjnego na podstawie obserwacji w okresie od 11 września do 10 grudnia 2016 roku [Quality of the lawmaking in the first year of Law and Justice government and the IX Statement on the quality of legislative process between 11<sup>th</sup> October and 10<sup>th</sup> December 2016]',

[http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/X%20Komunikat\\_OFL.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/X%20Komunikat_OFL.pdf), Obywatelskie Forum Legislacji przy Fundacji im. Stefana Batorego, 'Legislacja bez dialogu. XI Komunikat Obywatelskiego Forum Legislacji o jakości procesu legislacyjnego na podstawie obserwacji prowadzonej w okresie od 16 listopada 2017 do 15 maja 2018 roku [Legislation without dialogue. XI Statement on the quality of legislative process based on observations conducted between 16 November 2017 and 15 May 2018]',

[http://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/XI\\_Komunikat\\_OFL.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/XI_Komunikat_OFL.pdf), accessed 28 July 2018

<sup>99</sup> T. Schimanek, 'Ocena procesu tworzenia rządowego projektu ustawy o zmianie ustawy o działalności pożytku publicznego i o wolontariacie – etap rządowy i parlamentarny [Evaluation of government's amendment to Act on public benefit and volunteer work legislative process]',

[http://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/TSchimanek\\_ust%20o%20dzialalnosci%20pozytku%20publicznego\\_etap%20Orzadowo-parlamentarny.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/TSchimanek_ust%20o%20dzialalnosci%20pozytku%20publicznego_etap%20Orzadowo-parlamentarny.pdf), accessed 28 July 2018



*The government has taken action which in practice was aimed at limiting the transparency in the public life. Paradoxically, it took a form of a draft bill of 'Act on transparency in public life', which was supposed to replace three legal acts: the Act on restrictions on the conduct of economic activity by persons performing public functions, the Act on access to public information, and the Act on lobbying activity in the law-making process. First media information about the bill was published on January 2017, but the governmental bodies refused to share any details about its content. On October 23rd the Special Services Coordinator Mariusz Kamiński, and Secretary of State at the Chancellery of the Prime Minister Maciej Wąsik presented the objectives of the draft Act on transparency in public life on the press conference. Due to public pressure, public consultations were organized (previously government planned to organize only one meeting regarding the bill). Consultations regarding first draft of the bill lasted for only 9 days and because of National Independence Day (11th November), they basically lasted for 5 work days. No explanation for these were provided (the law specifies that the consultations should last at least 21 days and that this period can be reduced only in some situations, that did not apply here). Consultations regarding the second draft lasted for 10 days. There were no public consultations about third and fourth draft of the bill. Nevertheless, some organizations decided to send their opinions about the bill. About 38 organizations were asked to take part in public consultations, mainly those who specialize in the scope of the bill. In total, about 252 opinions were sent to the government during the consultation process, from at least 149 organizations and private persons. The act was universally criticized by almost all organizations, including the RPO. The government did not respond to organizations opinions, but published short, 8-page report from the consultations. At first the legislative procedure was unnecessarily rushed – the government planned that the Act will come into force on January 1st 2018, which meant that the whole legislative process should take less than 2 months. After receiving negative feedback, including opinions from other ministries, works on the bill were put on hold<sup>100</sup>.*

## Cooperation with Various Institutions, Media and Other Public Organizations

As it was stated before, since general election in 2015 LGBT NGOs are not included in the development and implementation of public policies that could have an impact on their activities. The cooperation with the

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<sup>100</sup> Krzysztof Izdebski, 'Ocena procesu tworzenia rządowego projektu ustawy o jawności życia publicznego – etap rządowy [Evaluation of the government's Act on transparency in public life legislation process]', [http://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idej/KIzdebski\\_ust%20o%20jawnosci%20zycia%20publicznego\\_etap%20rzdowy.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idej/KIzdebski_ust%20o%20jawnosci%20zycia%20publicznego_etap%20rzdowy.pdf), accessed 28 July 2018



central government, according to the experience of KPH and Lambda Warsaw was completely suspended by the authorities.

**Case: liquidation of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance**

*Until April 2016 LGBT NGOs were actively involved in the works of Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance. The task of the Council created in 2013 (within the framework of the Ministry of Administration and Digitization) was to coordinate activities undertaken by public administration bodies to combat inequalities related to racial, national or ethnic origin and to counteract racism and xenophobia. However, by order of the Prime Minister of 27 April 2016, the Council was liquidated. The decision was criticized by various NGOs and the RPO.<sup>101</sup>*

When it comes to national human rights institutions (the RPO and the PRT), since the change of government in 2015, the LGBTI rights issues lie only in the area of the RPO activities.

Representatives of LGBT organizations and the RPO are involved in many initiatives, for instance in co-organizing meetings and conferences. RPO intervenes in matters of human rights of LGBT persons on his own initiative or as a result of notification by LGBT organizations. RPO openly supports LGBT initiatives aimed at solving current problems such as: the inclusion of homophobic hate crime motivation in penal code<sup>102</sup>, amendment of the Act on equal treatment (so that it would also fully apply to discrimination based on sexual orientation and gender identity)<sup>103</sup> and speaks positively about the draft law regulating the legal gender recognition<sup>104</sup> and the need to end homophobic and transphobic bullying in schools<sup>105</sup>. The RPO also

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<sup>101</sup> RPO, 'Rzecznik o likwidacji Rady do spraw Przeciwdziałania Dyskryminacji Rasowej, Ksenofobii i związanej z nimi Nietolerancji' (6 May 2016), <https://www.rpo.gov.pl/pl/content/rpo-w-sprawie-likwidacji-rady-do-spraw-przeciwdzialania-dyskryminacji-rasowej-ksenofobii-i-zwiazanej>, accessed 28 July 2018

<sup>102</sup> RPO, 'Wystąpienie do MS ws. ochrony ofiar przestępstw z nienawiści' (22 October 2015), <https://www.rpo.gov.pl/pl/content/do-ms-ws-ochrony-ofiar-przestepstw-z-nienawisci>, accessed 28 July 2018

<sup>103</sup> RPO, 'Wystąpienie do Pełnomocnika Rządu do spraw Równego Traktowania w sprawie funkcjonowania ustawy z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania' (28 May 2012), <http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1647153&sygnatura=RPO/687085/11/I/4.1.8%20RZ>

<sup>104</sup> RPO, 'Wystąpienie do Ministra Sprawiedliwości w sprawie stanu prac nad regulacją dotyczącą sytuacji prawnej osób transseksualnych', (21 March 2012), <http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1633035&sygnatura=RPO/660929/10/I/126%20RZ>, accessed 28 July 2018

<sup>105</sup> oswiata.abc.com.pl, 'RPO: szkoły muszą umieć reagować na przemoc motywowaną uprzedzeniami' (4 December 2017),

participates in a variety of court proceedings regarding LGBT rights (see the section on the NHRI).

As for the second Equality Body in Polish legal framework, since 2015 the PRT has not cooperated with LGBT NGOs. The previous cooperation (before 2015) was also usually limited to and relied on encouraging PRT to take specific actions. To some extent this is the result of the fact that the activities of PRT as a governmental body depend to a large extent on government policy, which since 2015 represents right-wing views and is not conducive to actions for LGBTI persons. Last activities of the PRT regarding LGBT issues reported on his website are from March 2016, when the PRT condemned attacks on KPH office<sup>106</sup>. However this reaction was not PRT's own initiative. It resulted from the strong criticism met by the PRT after lack of his reaction to previous attacks on KPH office<sup>107</sup>.

Also, until 2016 LGBT NGOs were involved in the social consultations of the National Action Plan for Equal Treatment, which was being developed by the PRT.<sup>108</sup> Unfortunately, the program was not continued by the PRT in the following years despite the assurances presented by the PRT to the RPO.<sup>109</sup>

It is also worth to note that, on May 23, 2016, the PRT organized a seminar at the Chancellery of the Prime Minister, during which the legal solutions contained in Equal Treatment Act were discussed.<sup>110</sup> Coalition for Equal Opportunities which is an informal group of Polish NGOs (among others LGBTI organizations) acting against different forms of discrimination, proposed amending the Act (by opening a catalogue of legally protected features, as well as undertaking activities aimed at conducting anti-discrimination education and supporting organizations working for equal treatment and anti-discrimination). However due to the lack of good will on the part of the government no changes in the current law were adopted.

The only figures interested in cooperation with LGBT NGOs on the national level are the ones representing liberal opposition parties.

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<http://www.oswiata.abc.com.pl/czytaj/-/artykul/rpo-szkoly-musza-umiec-reagowac-na-przemoc-motywowana-uprzedzeniami>, accessed 28 July 2018

<sup>106</sup> See: [https://www.spoleczenstwoobywatelskie.gov.pl/aktualnosci/dyrektor-narodowego-instytutu-wolnosci-centrum-rozwoju-spoleczenstwa-obywatelskiego-1?tid=11&field\\_news\\_type\\_value=All](https://www.spoleczenstwoobywatelskie.gov.pl/aktualnosci/dyrektor-narodowego-instytutu-wolnosci-centrum-rozwoju-spoleczenstwa-obywatelskiego-1?tid=11&field_news_type_value=All)

<sup>107</sup> Newsweek.pl, Atak na siedzibę KPH. Homofobi czują się w Polsce bezkarni (Newsweek, 9 May 2017)

<http://www.newsweek.pl/polska/spoleczenstwo/atak-na-siedzibe-kph-homofobi-czuja-sie-w-polsce-bezkarni.artykuly,409882,1.html>, accessed 28 July 2018

<sup>108</sup> Letter of the PRT of 21 April 2018.

<sup>109</sup> See: [https://www.rpo.gov.pl/sites/default/files/odpowiedz\\_SORT.pdf](https://www.rpo.gov.pl/sites/default/files/odpowiedz_SORT.pdf)

<sup>110</sup> PRT, '5 lat ustawy równościowej – ocena funkcjonowania i rekomendacje zmian' – seminarium w Kancelarii Prezesa Rady Ministrów' (24 May 2016), <https://www.spoleczenstwoobywatelskie.gov.pl/aktualnosci/5-lat-ustawy-rownosciowej-ocena-funkcjonowania-i-rekomendacje-zmian-seminarium-w>

LGBTI rights are openly backed in the programmes of such parties as: Razem (Together), Zieloni (The Greens) and to some extent by Nowoczesna (Modern), Sojusz Lewicy Demokratycznej (Democratic Left Alliance) and Platforma Obywatelska (Civic Platform). For example, Nowoczesna party introduced to Parliament bill on registered partnership, that was prepared in collaboration with LGBT NGOs, particularly Love Does Not Exclude Association and Campaign Against Homophobia. It has not been voted on yet.

However, more comprehensive and fruitful cooperation between LGBT NGOs and authorities exists on the local level, in cases when the local authorities are not connected directly or indirectly with Law and Justice party. This applies especially to city of Gdańsk, Łódź and Poznań, that are open to collaboration with LGBTI organizations.

**Case: The adoption of so-called Model for Equal Treatment in Gdańsk**

*In 2018 the city of Gdansk adopted the Model for Equal Treatment, which is supposed to set the directions of actions for the city and its units to support for the disabled, the elderly and discriminated on the grounds of sex, sexual orientation, religion or belief<sup>111</sup>. The process of preparation of this tool lasted from September 2017 to May 2018. Over 100 people and organizations worked on developing diagnoses and recommendations for the Model. Even though that the Model was successfully implemented it also needs to be mentioned, that its adoption met with a very large misunderstanding of particular opponents of LGBTI movements, which believed that the adoption of the model will seek so-called "homopropaganda".<sup>112</sup>*

As for the cooperation with media, LGBT organizations are in a permanent contact with media representatives dedicated to LGBT issues. Information on the activities of these organizations appears regularly in the mainstream press in the country. This also includes the publication of data from the research carried out by NGOs. Also, since 2011, Replika Foundation have published a bimonthly socio-cultural magazine "Replika", which is the only LGBTI periodic in Poland. In one of the leading Warsaw radio stations (TOK FM) there is a regular show, "Better late than never," which is dedicated to LGBT issues.

Quite common is a collaboration between organizations that deal with human rights protection in Poland. These organizations issue joint statements, co-organize conferences and trainings. If necessary, they

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<sup>111</sup> Maciej Naskręt, 'Rada Gdańska przyjęła "Model na rzecz równego traktowania"' (trojmiasto.pl, 28 June 2018)

<https://www.trojmiasto.pl/wiadomosci/Rada-Gdanska-przyjela-Model-na-rzecz-rownego-traktowania-n125124.html>, accessed 28 July 2018

<sup>112</sup> <http://trojmiasto.wyborcza.pl/trojmiasto/7,35612,23680401,trwa-batalia-o-model-ds-rownego-traktowania-skrajna-prawica.html/>, accessed: 28 June 2018

form informal coalitions that can create more impact in lobbying certain cases. This collaboration also includes mutual financial assistance.

**Case: The Coalition for Equal Opportunities**

*The coalition constitutes of leading Polish expert organizations, for many years active in the field of anti-discrimination. The main purpose of the platform is to conduct substantive dialogue with the government responsible for developing and implementing a comprehensive and effective anti-discrimination law. Members of the platform monitored the progress of the equality law, at the same time presenting substantive proposals for modern legal solutions in the field of counteracting unequal treatment. Coalition for Equal Opportunities in the period between 2012 and 2018 undertook a number of activities aimed at drawing public authorities' attention to the anti-discrimination policy and the situation of LGBTQI persons. Unfortunately, in most cases they have not been implemented.<sup>113</sup>*

NGOs also cooperate with legal professional associations (advocates and attorneys at law). They are involved pro bono in providing assistance to clients and organizations in strategic litigation programs.

**Case: the Coalition for Partnerships and Equal Marriage**

*The Coalition for Partnerships and Equal Marriage <sup>114</sup> was established in November 2015. It is made up of five gay and lesbian couples as well as non-governmental organizations and law firms supporting them. The aim of the Coalition is to lead to the issuance of a historic judgment by the European Court of Human Rights (similar to Oliari and Others v. Italy judgement), which will oblige Poland to adopt provisions allowing same-sex couples to enter into registered partnerships or marriages.*

LGBT organizations are also able to take part in training courses, conferences and other forms of international activities related to human rights, organized by both State institutions and NGOs.

**Case: the conference 'Hate speech – towards interdisciplinary approach'**

*Many representatives of NGOs took part in the conference 'Hate speech – towards interdisciplinary approach' on February 2017 in Warsaw organised by the Department of Criminology, Institute of*

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<sup>113</sup> Coalition's stances are available on the website:

<http://www.ptpa.org.pl/koalicja-rownych-szans/stanowiska/>

<sup>114</sup> see: <https://dostrasburga.pl/>

*Legal Sciences of the Polish Academy of Sciences, Lambda Warszawa Campaign Against Homophobia<sup>115</sup>.*

**Case: The conference "First of all, the client: Practical aspects of combating violence motivated by prejudices"**

*The conference "First of all, the client: Practical aspects of combating violence motivated by prejudices", held on December 16, 2017 in Warsaw, was aimed to broaden knowledge in the practical aspects of working with people who experienced crimes motivated by prejudices. The conference program consisted of three thematic blocks and included issues related to the law, cooperation with the media and support for victims<sup>116</sup>.*

## Limited Protection of LGBT Rights Defenders and Activists

Defenders of human rights of lesbian, gay, bisexual and transgender persons, whether they are associated formally in an organization, as independent activists or just participating in events aimed at protection of LGBTI rights, do not receive any special protection from the state against hostility and aggression. They can only rely on general provisions contained in acts of national law. One example of such provisions is the Act on Protection and Assistance for Aggrieved Party and Witness of 28 November 2014. According to this regulation in the event of any threat to life or health of an aggrieved party or his/her closest persons, Police protection may be granted to them for the period of procedural action, and if a degree of threat is significant, they may be granted personal protection or assistance in changing their place of residence.

Occasionally, incidents occur against LGBT activists, whose perpetrators often remain undetected.

**Case: The attacks on LGBT NGOs' offices**

*In 2016, the Campaign Against Homophobia's office was attacked three times<sup>117</sup> and the Lambda Warsaw's office twice<sup>118</sup>. The statement on attacks on both organizations was issued by the RPO,*

<sup>115</sup> more on: <https://kph.org.pl/konferencja-mowa-nienawisci-w-strone-interdyscyplinarnego-podejscia-do-zjawiska/>

<sup>116</sup> see: <https://kph.org.pl/wez-udzial-w-konferencji-po-pierwsze-klientka-praktyczne-aspekty-zwalczania-przemocy-motywowanej-uprzedzeniami/>

<sup>117</sup> KPH, 'Atak na siedzibę Kampanii Przeciw Homofobii – wybite szyby', (8 May 2017), <https://kph.org.pl/atak-na-siedzibe-kampanii-przeciw-homofobii-wybite-szyby/>, accessed 14 July 2018

<sup>118</sup> Lambda Warsaw, 'Kolejny atak na siedzibę Lambdy Warszawa', <http://lambdawarszawa.org/lambdawarszawa/kolejny-atak-na-siedzibe-lambdy-warszawa/>, accessed 28 July 2018

*Adam Bodnar, who described these events as "hate crimes"<sup>119</sup>. The vice-president of Warsaw, Jarosław Józwiak, also intervened. However, there was no reaction from the Minister of Justice, despite the appeal calling for action to change the penal code<sup>120</sup>. The Ministry issued a statement that these crimes are to be regarded as common ones and not of any special significance<sup>121</sup>. The attack on KPH office repeated in 2017. After these event, the Police decided to assign police patrols, which for many weeks stood under the KPH office. Also the number of police patrols in the neighbourhood significantly increased. At present, police activities rely on regular police visits to KPH office to verify the current situation.*

Apart from this attacks state involvement in the protection against homophobic, biphobic or transphobic hostility and aggression is still practically limited to securing equality marches. Even though that the protection of the marches is effective and eliminates the attacks during the event, NGOs and media still report attacks on participants which occur when they are coming back from marches.<sup>122</sup> The perpetrators of these attacks usually remain undetected.

As a side note it needs to be mentioned that the effective protection against such attacks is hampered by the fact that there is a lack of legal regulations concerning hate crimes motivated by homophobia or transphobia. LGBT activists can only use the general provisions of the penal code regarding, among others, threats, violation of bodily integrity, defamation. It should be noted that crimes like defamation, violation of bodily integrity and bodily harm (that lasts less than 7 days) are prosecuted on private accusation, however the prosecutor may choose to publicly prosecute them should he decide it is in the public/general interest. According to the KPH's experience (gathered through providing legal counselling to persons who experienced this category of hate crimes), these persons are often discouraged from reporting an offence to the authorities and are instructed to file private criminal charges.

In order to ensure the safety of persons who may be exposed to aggression motivated by prejudice, the Ministry of Internal Affairs and Administration (MSWiA) provides periodic educational activities aimed

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<sup>119</sup> RPO, 'Oświadczenie Rzecznika Praw Obywatelskich w sprawie kolejnego ataku na siedzibę Kampanii Przeciw Homofobii' (9 May 2017), <https://www.rpo.gov.pl/pl/content/oswiadczenie-rzecznika-praw-obywatelskich-w-sprawie-kolejnego-ataku-na-siedzibe-kampanii-przeciw>, accessed 28 July 2018

<sup>120</sup> See more: <https://kph.org.pl/wysluj-apel-do-ministra-ziobro/>

<sup>121</sup> Anton Ambroziak, 'Kolejny atak na siedzibę Kampanii Przeciw Homofobii. A PiS wciąż ignoruje przestępstwa z nienawiści' (oko.press, 9 May 2017), <https://oko.press/kolejny-atak-siedzibe-kampanii-przeciw-homofobii-a-pis-wciaz-ignoruje-przestepstwa-nienawisci/>, accessed 28 July 2018

<sup>122</sup> Paweł Figurski 'Policja szuka narodowców, którzy zaatakowali uczestników Marszu Równości' (Gazeta Wyborcza Kraków, 22 May 2018), <http://krakow.wyborcza.pl/krakow/7.44425.23435536.narodowcy-zaatakowali-uczestnikow-marszu-rownosci-pobicie-i.html>, accessed 28 July 2018



at equipping Police officers with the knowledge and skills necessary to counteract and combating hate crimes. In this respect, the MSWiA coordinates implementation in the Police, a training program dedicated to the issue of hate crime: 'Training to counter hate crimes for law enforcement officers - TAHCLE'. The project covers such issues as: recognition of hate crimes, proper conduct of activities in such cases, adequate response of police officers to such events and prevention. Training topics refer to hate crimes targeting various groups, including supporters of minority groups. The trainings are conducted on an ongoing basis and further implementation is planned in the following years. They have been also continued in 2018<sup>123</sup>. According to information provided by the Ministry by the end of 2017 almost 104,000 officers have participated in this program.

However, these training sessions provides only a very basic knowledge about hate crimes targeting LGBT persons. Also, since the elections in 2015 Polish LGBT NGOs recorded several statements made by the government officials in which they challenged the importance of counteracting hate crimes. For instance, in June 2016 the Minister of Interior Affairs and Administration, who previously called the hate crimes "margin of a margin" <sup>124</sup>, withdrew from Police use the handbook on hate crimes, which was written in collaboration with the OSCE<sup>125</sup>. In November 2016 Human Rights Protection Team operating under the MSWiA was liquidated<sup>126</sup>. Several NGOs reported that since 2015 there have been significantly less training courses organized by NGOs for the Police on hate crimes and discrimination<sup>127</sup>.

## Recommendations

- 1) Introduction of regulations or commonly accepted practices to enable organizations working for the benefit of people at risk

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<sup>123</sup> Ministry of Internal Affairs Secretary of State reply to interpellation nr 18534, 15 February 2018,

<http://www.sejm.gov.pl/sejm8.nsf/InterpelacjaTresc.xsp?key=65C7DD44>, accessed: 28 July 2018

<sup>124</sup> Anton Ambroziak, Prokuratury bagatelizują przestępstwa z nienawiści. Umarzają aż 76 proc. Postępowań'

(oko.press 15 May 2017) <https://oko.press/prokuratury-bagatelizuja-przestepstwa-nienawisci-umarzaja-az-76-proc-postepowan/>, accessed: 28 July 2018

<sup>125</sup> tvn24.pl, 'Był podręcznik, nie ma podręcznika. Wiceszef MSWiA: uczył policjantów nienawiści' (tvn24.pl, 14 June 2016), <https://www.tvn24.pl/wiadomosci-z-kraju,3/policjanci-bez-naukowego-wsparcia-ministerstwo-wycofalo-podrecznik,652240.html>, accessed 28 July 2018

<sup>126</sup> Joanna Gierak-Onoszko, 'Mariusz Błaszczak likwiduje Zespół ds. Ochrony Praw Człowieka. A przecież jest coraz bardziej potrzebny' (Polityka, 24 November 2016) <https://www.polityka.pl/tygodnikpolityka/kraj/1684534,1,mariusz-blaszczak-likwiduje-zespol-ds-ochrony-praw-czlowieka-a-przeciez-jest-coraz-bardziej-potrzebny.read>, accessed 28 July 2018

<sup>127</sup> Anna Gmiterek-Zabłocka, 'Mniej szkoleń z mowy nienawiści - alarmują organizacje pozarządowe. Mamy komentarz policji', (tok.fm, 3 January 2017), <http://www.tokfm.pl/Tokfm/7,103454,21197786,mniej-szkolen-z-mowy-nienawisci-alarmuja-organizacje-pozarzadowe.html>, accessed 28 July 2018

of discrimination on the grounds of sexual orientation and gender identity to be involved as partners in the development, consultation and - where possible - implementation of public policies and legislation, both at local and national level.

- 2) Resignation from practices and institutional mechanisms aimed at providing strict political control over distribution of public funds to LGBT NGOs, especially in the framework of the National Freedom Institute – Centre for the Development of Civil Society.



### III. Freedom of Expression and Peaceful Assembly

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*Karolina Gierdal*

- *There are no special provisions regarding freedom of expression and peaceful assembly that would protect rights of groups vulnerable to discrimination and general rules apply to all eager to exercise their rights in this area. Protection of these freedoms takes mostly the form of non-interference from the state.*
- *It is possible to seek, distribute and receive impart information on subjects dealing with SOGIESC. This flow of information on LGBTI issues is stimulated mostly by LGBTI community and NGOs acting on benefit of this community and does not receive any substantial help from the state.*
- *The freedom of expression in Polish legal system is limited by both civil and criminal law. The shape of these provisions stays in line with the current international standards. Since 2015 some of these provisions started being used instrumentally by the authorities and this might result in hindering the freedom of expression.*
- *Since 2015 there was no campaign in public media on LGBTI human rights.*
- *The state does not provide sufficient information on safe sexual practices.*
- *The constitutional freedom of peaceful assembly can be exercised by all people with full legal capacity residing in Poland. There are no special provisions securing rights of minorities or groups at risk of discrimination.*
- *New restrictions regarding colliding assemblies adopted in 2017 can be potentially threatening to freedom of assembly.*
- *A new concept of a “cyclical assembly”, adopted in 2017, can potentially restrict individuals’ ability to hold counter-demonstrations and spontaneous demonstrations.*
- *Protection of peaceful demonstrations by the Police in favour of the human rights of LGBTI persons has to be assessed positively. However, the Police is still criticized by the NGOs for not intervening when the actions of counter-demonstrators are not a direct physical threat, but take a form of hate speech, slandering or hateful banners.*

## Introduction

Freedom of expression and peaceful assembly are guaranteed by the Polish Constitution (art. 54 and art. 57).<sup>128</sup> There are no special provisions that would protect these rights for groups suspect to discrimination and general rules apply to all eager to exercise their rights in this area. Protection of these freedoms takes mostly the form of non-interference from the state.

## Access to and Distribution of Information on Subjects Relating to LGBTI Issues

It is possible to seek, distribute and receive impart information on subjects dealing with sexual orientation or gender identity. Lots of NGOs, including the KPH or Lambda Warsaw, are free to publish materials that raise awareness on the human rights of LGBTI persons and frequently do so. They are also able to get involved with various media, both on the local as well as on national level.

However, it should be emphasized that this flow of information is stimulated mostly by the LGBTI community and NGOs acting on benefit of this community and does not receive any substantial help from the state. On the contrary, since 2015 no materials have been published or financed on the national level that would be focused on raising awareness on rights of LGBTI persons. Since that date almost all materials which have been published in this area were financed by the NGOs themselves or with funds from non-state sources.

The situation is a bit better on a local level, especially when the local authorities are not associated with currently governing party (Law and Justice). The positive examples include actions taken by the authorities of Poznań, Gdańsk, Warsaw and Słupsk.

### **Case: active support of LGBTI rights by the local authorities in Poznań**

*In 2017 the city of Poznań co-organized, alongside with Adam Mickiewicz University's Institute of Psychology and the local LGBTI NGO 'Stonewall Group' expert conference "Child in danger of homophobia. Homosexuality in family and city's social policies". The conference focused on the needs of non-heterosexual teenagers and children raised by non-heterosexual parents. The participants were encouraged to reflect upon the possibilities of developing local anti-discrimination initiatives<sup>129</sup>. The city of Poznań also took patronage of the 2017 and 2018 local Equality March.*

<sup>128</sup> Konstytucja Rzeczypospolitej Polskiej [The Constitution of the Republic of Poland], Journal of Laws No 78, item. 483, as amended 1997.

<sup>129</sup> See more at: <http://dziecko.grupa-stonewall.pl/>

**Case: active support of LGBTI rights by the local authorities in Gdańsk**

*Mayor of Gdańsk took patronage of 2018 Tri-City Equality Days<sup>130</sup>. He also participated in Gdansk equality marches in 2017<sup>131</sup> and 2018<sup>132</sup>. In June 2018 the city passed a resolution adopting Model for Equal Treatment – a document containing good practices regarding protection of rights of marginalised groups that are subject to discrimination, including LGBT persons<sup>133</sup>.*

It needs to be noted, that also the Commissioner for Human Rights (RPO)'s activities in this field stand out positively comparing to the governmental approach. The RPO is actively engaged in the debate about LGBTI persons rights and openly supports them. The RPO also publishes materials focusing on LGBTI rights, often based on previously conducted research.

## The Evolution of the Interpretation of Provisions Limiting the Freedom of Expression

The freedom of expression in Polish legal system is limited by both civil and criminal law. For instance it is forbidden to “offend religious feelings” by slandering publicly the object of religious admiration or a place where religious ceremonies are held (art. 196) or “disturb a religious ceremony” (art. 195). It is also prohibited to “slander the Polish Nation or Republic of Poland” (art. 133), slander the President (art. 135) or slander Polish state symbols (art. 137). The shape of these provisions stays in line with the current international standards. Moreover, in the period between 2012 and 2015 LGBT NGOs did not record any serious irregularities in the way they were used and interpreted by the authorities. However, since 2015 some of these provisions started being used instrumentally by the authorities and this might result in hindering the freedom of expression.

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<sup>130</sup> More information in the presspack: [http://marsz3miasto.pl/wp-content/uploads/2018/05/presspack1\\_2018.pdf](http://marsz3miasto.pl/wp-content/uploads/2018/05/presspack1_2018.pdf)

<sup>131</sup> Szymon Zięba, 'Marsz Równości 2017 w Gdańsku pod hasłem "Miłość, nie wojna"', ([gdansk.naszemiasto.pl](http://gdansk.naszemiasto.pl), 27 May 2017), <http://gdansk.naszemiasto.pl/artykul/marsz-rownosci-2017-w-gdansk-pod-haslem-milosc-nie-wojna,4131154,artgal,t,id,tm.html>, accessed 28 July 2018

<sup>132</sup> Anna Dobiegała, Ilona Godlewska, Maciej Dzwonnik, 'Marsz Równości w Gdańsku w przyjaznej, spokojnej atmosferze', (*Gazeta Wyborcza Trójmiasto*, 26 May 2018), <http://trojmiasto.wyborcza.pl/trojmiasto/7,35612,23455809,trwa-marsz-rownosci-w-gdansk-sa-tez-kontrmanifestanci-aktualizujemy.html>, accessed: 28 July 2018

<sup>133</sup> Martyna Bunda, 'Model na Rzecz Równego Traktowania przyjęty. Gdańsk wybrał wolność i równość' (*Polityka*, 28 June 2018) <https://www.polityka.pl/tygodnikpolityka/spoleczenstwo/1754270,1,model-na-rzecz-rownego-traktowania-przyjety-gdansk-wybral-wolnosc-i-rownosc.read>, accessed: 28 July 2018

**Case: The Rainbow Flag Case**

*During the 1<sup>st</sup> Equality March in Częstochowa in July 2018 two participants were carrying a rainbow flag on which they depicted Polish state symbol – the white eagle. After receiving a complaint from one of the counter-demonstrators the Minister of Interior and Administration, wrote on his twitter about the case, stating that there will be a formal investigation<sup>134</sup>. Immediately after publishing this comment one of the district prosecutor's office in Częstochowa launched a formal investigation into a possible crime of slandering Polish symbols. These actions met with critical response from the independent media<sup>135</sup>, various NGOs<sup>136</sup> and citizens. For example, KPH prepared a special frame to be added to profile picture on Facebook with the slogan "The rainbow does not slender", which immediately became viral. Many people signed a petition to MSWiA. The actions of Ministry and prosecutor were regarded as a way to threaten the LGBT persons and discourage them from participating in public life and express their identity freely.*

## Exercising of the Freedom of Expression Through the Access to Public Media

Another aspect of the effective exercising of the freedom of expression relates to the unhampered access to the public media by the LGBT NGOs and community. According to Polish law public media are required to broadcast information about non – profit activities conducted by organizations with a status of Public Benefit Organization (OPP)<sup>137</sup>. There are regulations that specify how much time must be provided for that information every month by all public networks – on national and local level<sup>138</sup>. Public media are required to prepare their own programmes about OPP's activities, but they are free to choose which organizations they want to cover. They also have to broadcast social campaigns prepared by OPPs themselves. The OPP wanting to broadcast its spot must send a motion to public network. The decision about broadcasting particular campaign is reached by an internal commission, where the deciding vote belongs to

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<sup>134</sup> Marek Mamoń, 'Prokuratura wszczyna śledztwo: "Na Marszu Równości mogło dojść do znieważenia godła"', (wyborcza.pl, 10 July 2018), <http://czestochowa.wyborcza.pl/czestochowa/7,48725,23657408,prokuratura-wszczyna-sledztwo-na-marszu-rownosci-moglo-dojsc.html>, accessed 28 July 2018

<sup>135</sup> Anna Wójcik, 'Orzeł na tęczowym tle to nie zniewaga' (oko.press, 9 July 2018), <https://oko.press/orzel-na-teczowym-tle-to-nie-zniewaga-analiza-prawna/>, accessed 28 July 2018

<sup>136</sup> See the petition:

[https://dzialaj.akcjademokracja.pl/campaigns/384?utm\\_source=akcja&utm\\_medium=email&utm\\_campaign=blast2018-07-13](https://dzialaj.akcjademokracja.pl/campaigns/384?utm_source=akcja&utm_medium=email&utm_campaign=blast2018-07-13)

<sup>137</sup> see: Broadcasting Act - art. 23a

<sup>138</sup> see: KRRiT regulation on procedures regarding free-of-charge broadcasting by public networks information about non – profit activities conducted by Public Benefit Organizations from 29<sup>th</sup> April 2011

representatives from the public TV or radio. They are dependent on the current government. The decisions reached by commissions are final. There are no clear criteria for judging motions, and so the decisions are often arbitrary<sup>139</sup>. Since 2015 there was no campaign in public media on LGBTI human rights.

**Case: social campaign “I support civil partnerships” in public television**

*In 2014 a video from KPH social campaign “I support civil partnerships” was being broadcast for two weeks by public TV in 5 public channels, including two major ones. The campaign was dedicated to same-sex couples already living in partnerships in Poland, yet still lacking formal and legal recognition<sup>140</sup>.*

## The misuse of the reference to ‘Christian values’ and ‘promotion of national identity’ principles

The Broadcasting Act attaches particular importance to Christian values and promotion of national identity. According to article 18 par 1 of the Act, network programs cannot, inter alia, promote views that run counter to morality and “social good”. The Act also guarantees that all programs must respect the religious beliefs of viewers and listeners, in particular the Christian morality and system of values (art. 18 par 2). Violations of these provisions may result in a financial penalty from the National Broadcasting Council (the KRRiT). The decision is subject to judicial control (art. 53).

**Case: The “Harmidom” TV series case**

*On November 2017, Nickleodon Polska (one of the broadcasters) broadcast an episode of “Harmidom” TV series. The episode featured a boy who had same-sex parents. After receiving a complaint from one of the Polish right-wing NGO The KRRiT concluded that the episode was promoting family type contrary to catholic moral values and that tolerance and non-discrimination towards sexual minorities does not mean that their “behavior” is accepted. The Chair of the KRRiT issued a letter to the broadcaster, reminding him about the necessity of following the legal regulations in broadcaster’s activities<sup>141</sup>.*

<sup>139</sup> ngo.pl, ‘Jak zgłosić kampanię społeczną do mediów publicznych (procedury)’ <http://poradnik.ngo.pl/jak-zglosic-kampanie-spoeczna-do-mediow-publicznych>, accessed 28 July 2018

<sup>140</sup> See more at: <http://www.popieramziazki.pl/en/o-kampanii/>

<sup>141</sup> Gazeta.pl, ‘Para gejų z dzieckiem w popularnej bajce. KRRiT upomina nadawcę: “to sprzeczne z nauką Kościoła” (gazeta.pl, 5 June 2018), <http://wiadomosci.gazeta.pl/wiadomosci/7,114883,23498791,krrit-reaguje-na-skarge-ws-bajki-harmidom-z-para-gejow-to.html>, accessed 28 July 2018

Moreover, the KRRiT may grant special privileges to so-called public/social broadcasters, that, inter alia, respect Christian values and universal ethics, promote patriotism and Polish national identity (art. 10 (4)). The broadcaster granted such status is exempted from concession fee (art. 39b). This status was granted, inter alia, to Radio Maryja (Mary's Radio), which from its beginning was accused of promoting anti-Semitic, racist, homophobic views.

### Limited Access to Information on Safe Sexual Practices

The state does not provide sufficient information on safe sexual practices. The AIDS National Centre, which is a Ministry of Health's agency, is highly criticized for focusing its actions only on the treatment of HIV – positive persons and providing antiretroviral therapy<sup>142</sup>. Although the Centre is supposed to take action in the area of health care prevention, it spends less than 2% of its budget on preventive care. According to the report by the Supreme Audit Office (NIK) from 2015, the expenditure on preventive care was systematically falling from 3,5% of the whole budget to 0,9% in 2013 and 2014. In the examined period the number of educational preventive programmes dropped from 48 to 2 per year, the facilities receiving the training dropped from 2144 to 10, the number of social of social campaigns dropped from 10 to 5 and the number of projects in the area of education on sexually transmitted diseases dropped from 74 to 15 each year, which lead to significant decline in number of recipients from 184.470 to just 24.198.<sup>143</sup>

The Centre is also criticized for its social campaigns, which are perceived as based solely on conservative morality. The information provided by the Centre is addressed to heterosexual couples, pregnant women and specialists. There is limited information about same-sex couples and types of sex other than vaginal sex<sup>144</sup>.

#### **Case: the reaction of the AIDS National Centre to "Sex in my city" awareness raising campaign**

*In 2013 Lambda Warsaw and 7 other NGOs prepared first social campaign aimed at providing knowledge about safe sexual practices and safer way to use psychoactive substances among Men who have sex with Men (MSM), "Sex in my city". The*

<sup>142</sup> Anton Ambroziak, 'Ministerstwo Zdrowia ostatecznie rozwiąże problem HIV w Polsce', (oko.press, 19 January 2017), <https://oko.press/ministerstwo-zdrowia-ostatecznie-rozwiaze-problem-hiv-polsce/>, accessed 28 July 2018

<sup>143</sup> NIK's Audit report – Implementation of National HIV prevention and AIDS combatting program in 2012 – 2013, <https://www.nik.gov.pl/aktualnosci/nik-o-zapobieganiu-hiv-i-zwalczaniu-aids.html>, accessed 28 July 2018

<sup>144</sup> Jakub Janiszewski, 'Kto w Polsce ma HIV? Epidemia i jej mistyfikacje [Who has HIV in Poland? Epidemic and its mystification]', Warszawa: Wydawnictwo Krytyki Politycznej 2013



*informative content was published on a website. The campaign also included training courses, distribution of leaflets and preservatives. Shortly after the start of the campaign, one of the Polish main conservative newspapers, Rzeczpospolita, published an article condemning information provided on the website, because of supposed vulgar descriptions of anal sex and instruction on how to use drugs. The AIDS National Centre, which gave funds for the campaign, terminated the contract claiming the content of the website was not consulted with the Centre<sup>145</sup>.*

## New Obstacles in Exercising the Freedom to Peaceful Assembly

The constitutional freedom of peaceful assembly can be exercised by all people with full legal capacity residing in Poland. There are no special provisions securing rights of minorities or groups at risk of discrimination.

According to The Law on Assemblies an assembly must be notified to local authorities within at least 6 or 2 days before the event (depending on whether the gathering should interfere with road traffic) and it can be done even via e-mail (art. 7 and art. 22). Spontaneous assemblies that take place in relation to sudden and unforeseen events in the public sphere, do not require any notification to municipalities (art. 3 par. 2).

However, some new restrictions regarding colliding assemblies, have been adopted recently and can be potentially threatening to freedom of assembly. In the event of receiving notifications about at least two assemblies that are to be held at the same place and at the same time, the municipality can come to a conclusion that this situation may potentially endanger people's lives, health or property. In that case, assemblies notified later must change their date or place (art. 12) or – should it not be possible – can be banned (art. 14 par. 2). It should be noted that assemblies are regarded as colliding when their routes are planned less than 100 m from each other.

### **Case: difficulties in organizing the Equality March in Czestochowa**

*The organizers of Czestochowa 1<sup>st</sup> Equality March in July 2018 had to change the hour of their assembly. They have announced the March in social media before formally notifying the municipality and right-wing organizations managed to notify the local authorities*

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<sup>145</sup> Agnieszka Wądołowska, "Rz" oburzyła się akcją "Seks w moim mieście". Strona zdjęta. Twórcy: Grzeczne kampanie nie działają', (gazeta.pl, 19 November 2013), [http://wiadomosci.gazeta.pl/wiadomosci/1,114871,14977598,\\_Rz\\_\\_oburzyla\\_sie\\_akcja\\_\\_Seks\\_w\\_moim\\_miescie\\_\\_\\_Strona.html](http://wiadomosci.gazeta.pl/wiadomosci/1,114871,14977598,_Rz__oburzyla_sie_akcja__Seks_w_moim_miescie___Strona.html), accessed 28 July 2018

*about their counter-manifestations, planned on the same route, earlier<sup>146</sup>.*

The newly amended provisions also introduced a new concept of a “cyclical assembly”, that can potentially restrict individuals’ ability to hold counter-demonstrations and spontaneous demonstrations (art. 27 – 28). Cyclical assemblies are defined as organized by the same organizer at the same place or on the same route at least four times a year or those that were organized at least once a year during national or state holidays in the period of last three years. A province governor (voivode), which is the local representative of the government, decides whether an assembly is considered “cyclical”.

According to the new law, if a province governor issues permission for the holding of a cyclical assembly at the time and place of another assembly, then a municipal authority will be obliged to prohibit the “non-cyclical” assembly (art. 14 par 3).

Having this in mind, we believe that there is a risk of using a concept of cyclical assembly as a tool to prohibit assemblies relating to LGBTI issues. For instance, the mechanism of the cyclical assemblies can be used to limit the right of the NGOs to organize counter – demonstrations during the so-called ‘Marches of Independence’ (which are organized annually on the November 11th and are used by the extreme right-wing, nationalist groups to present homophobic slogans in the public space).

The municipality authority can prohibit an assembly also on the grounds that it supposedly endangers people’s life, health or property or when its objectives are infringing freedom of assembly or Polish penal laws (art. 14, par 1 and 2). Public morality cannot be the criterion. However, KPH and Lambda Warsaw are of the opinion that the criteria are not objective and open to interpretation.

In all cases when assembly is prohibited, this decision is subject to the judicial control. The whole proceedings should take no more than 96 hours, including the appeal (art. 16). Taking into account the unconstitutional changes in the judicial system that are aimed at strengthening political influence on courts, it cannot be guaranteed that the judicial control over the municipality decision will be independent.

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<sup>146</sup> Dorota Steinhagen, ‘Pierwszy Marsz Równości w Częstochowie. Klasztor znów obroniony!’ (Gazeta Wyborcza, 16 July 2018), <http://wyborcza.pl/duzyformat/7,127290,23669611,pierwszy-marsz-rownosci-w-czestochowie-klasztor-znow.html> accessed 28 July 2018



## Protection of the Persons Participating in the Assemblies

Protection of peaceful demonstrations in favour of the human rights of LGBTI persons has to be assessed positively. The Police officers are trained and focus on preventing direct clashes by using cordon of officers separating the participants of the assembly from persons who would like to disturb the event. The Police also uses moving assistance, in cases when the demonstration is moving (for instance during the equality marches). The police officers are also adequately equipped (shields, dogs, water cannons, rubber ammunition). Also, during the LGBT related assemblies VIPs (for instance politicians of the opposition parties) receive personal protection from the Police<sup>147</sup>.

### **Case: the effectiveness of the Police during the Equality March in Częstochowa**

*During the 1<sup>st</sup> Equality March in Częstochowa (July 2018), numerous right-wing, nationalistic or Catholic counter-demonstrators tried to block the route of the march. The Police effectively prevented this from happening and even fined some of the counter-demonstrators<sup>148</sup>.*

However, it needs to be mentioned that according to the information provided by the Police Plenipotentiary for Human Rights Protection (at the meeting with the representatives of KPH and Lambda Warsaw held at the Main Police Headquarters on 28<sup>th</sup> June 2018), the law enforcement officers receive only a general training regarding the protection of assemblies and there are no particular trainings concerning sensitization on the protection of any specific group, including LGBT persons. Nevertheless, police officers who are appointed to protect certain events are always informed about the group and its specific needs. It has to be noted though that this kind of training should be rather seen as preparation for a particular event from operational standpoint. Sensitization or raising awareness and soft competence are not part of the training. At the same meeting, the Plenipotentiary also confirmed that special analysis is conducted after each equality march, which covers the course of action and the problems that occurred during the march in order to evaluate the measures of protection that were undertaken and to plan future efforts. According to the Police - marches are becoming safer each year.

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<sup>147</sup> Information gathered by the representative of KPH during the observation of the Equality March in Rzeszów on June 30<sup>th</sup> 2018.

<sup>148</sup> Dorota Steinhagen, 'Częstochowa. Próbowali zatrzymać Marsz Równości pod Jasną Górą' (wyborcza.pl, 8 July 2018), <http://czestochowa.wyborcza.pl/czestochowa/7,48725,23649680,czestochowa-probowali-zatrzymac-marsz-rownosci-pod-jasna-gora.html>, accessed 28 July 2018

The Police is however still criticized by the NGOs for not intervening when the actions of counter-demonstrators are not a direct physical threat, but take a form of hate speech, slandering or hateful banners.

**Case: Lack of the Police reaction to homophobic banner during the Equality March in Rzeszów**

*During the 1<sup>st</sup> Equality March in Rzeszów in 2018, the counter-demonstrators presented a banner depicting a foot on the bicycle pedal and a slogan 'Miejsce pedała jest pod butem' ['A faggot belongs under a shoe'], which was a wordplay (in Polish language the term 'pedal' not only refers to the bicycle pedal but is also a degrading term similar to English 'fag/faggot')<sup>149</sup>. The Police did nothing about the banner, despite the numerous complaints from protesters.*

However, from the experience of KPH, the counter-protests are often filmed by Police and some of the protesters are asked to present their IDs during the demonstration. Thanks to this strategy the protesters who violate the law may be prosecuted after the assembly.

## Recommendations

- 3) Resignation from instrumental use of legal provisions (for instance prohibiting 'slandering Polish state symbols') that might result in hindering the freedom of expression of LGBT NGOs and LGBT community.
- 4) Resignation from instrumental use of new restrictions regarding the exercise of freedom of a peaceful assembly, especially those one regulating organizations of counter-demonstrations and spontaneous assemblies as well as granting an assembly the status of a 'cyclical assembly'.

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<sup>149</sup> Wprawo.pl, '„Miejsce pedała jest pod butem.” Cóż tam, panie, w polskiej polityce? Podsumowanie dnia (2.07.2018)' <http://wprawo.pl/2018/07/02/miejsce-pedała-jest-pod-butem-coz-tam-panie-w-polskiej-polityce-podsumowanie-dnia-2-07-2018/> accessed 28 July 2018

## IV. Right to Respect for Private and Family Life

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*Paweł Knut*

- Same-sex sexual acts are decriminalized in Poland. The legal age of sexual initiation for consenting individuals is the same for everyone.
- Theoretically, persons living in same-sex relationships are legally considered as cohabiting in the context of criminal law. In practice, they are not always informed of the right to refuse to testify against their partner during the trial.
- Legal gender recognition procedure is available; however it is far from being quick, transparent and accessible. Current procedure does not rely on self-determination and requires psychiatric diagnosis and divorce. Irreversible sterilization is not required for gender recognition procedure. The act simplifying the gender recognition (but still not relying on self-determination) process was adopted by the Parliament but vetoed by the president in 2015.
- A person who has completed a legal gender procedure can marry a person of the opposite gender (to their new legal gender).
- As a matter of principle, Polish legal system does not regulate the rights and obligations of unmarried couples, including same-sex unions. While rights of same-sex partners have been asserted in some court cases, the legal protection of same sex-partners remains full of holes.
- Polish law does not provide the institution of registered partnerships. Also, national legislation does not recognize such partnerships when they were concluded abroad.
- Proposals to legally recognize same-sex unions have been repeatedly submitted in the parliament in the past 15 years, to no avail.
- Negative opinions on LGBT parents are sometimes used in courts as an argument against custody over a child.
- Only married couples and single persons have the right to adopt a child. In practice marriages are preferred.
- Theoretically, lesbian couples and single women have access to medically assisted procreation. In practice since 2015, IVF clinics has been refusing the right to use their services for lesbian couples and single women.

### Treatment of Same-sex Partners in the Criminal Procedure

Currently, Polish criminal law legislation does not include provisions that result in explicit discrimination based on sexual orientation or gender identity. Same-sex sexual acts have not been criminalized in Poland since 1932. The legal age of sexual initiation for consenting

individuals is the same for heterosexual and non-heterosexual relationships (whatever their gender) and is set at the level of 15 years of age (art. 200 § 1 CrC).

However, what remains a serious concern is a non-discriminatory application of these provisions, especially the right of a same-sex partner to be granted a status of 'a person remaining in *de facto* marital cohabitation' (Art. 115 § 11 CrC) with the person who is accused, convicted or imprisoned. The right to obtain this status is particularly important as it guarantees the possibility to be recognized as a 'next of kin' by the courts and law enforcement officers. Such right provides several procedural rights, for instance, the right to refuse to testify against the partner who is accused of committing a crime (Art. 182 of the Code of Criminal Proceedings).

The interpretation of the term of 'a person remaining in *de facto* marital cohabitation' was presented to the Supreme Court in 2015. In the resolution of seven judges of February 25th, 2016 (Case file no. I KZP 20/15) the Supreme Court indicated that the difference of sex of persons remaining in such a relationship is not a condition for recognizing them as cohabiting partners in the meaning of this provision.

Even though that this legal principle was established, NGOs are still concerned whether persons in stable same-sex relationships can effectively execute rights arising from obtaining this status. Data gathered by KPH and Lambda Warsaw in the scope of this research does not confirm that law enforcement officers have been properly informed or trained to respect this provision in the LGBT contexts. When providing legal counseling KPH's lawyers registered at least one case in which the partner of the accused person was not informed of the right to refuse to testify against him during the trial.

These concerns are also related to the fact that some of the crimes in Polish Criminal Code are not prosecuted *ex officio*. This principle relates to situations when the perpetrator is the victim's next of kin. For instance, in case of taking a motor vehicle which is someone else's property (art. 289 § 5 CrC), it is a victim who has a right to decide whether to prosecute victim's partner. In case the same-sex partner is not perceived as a victim, the public prosecutor or the police officer will initiate proceedings without the victim's consent.

Effective execution of this right is also crucial in the framework of Polish Executive Criminal Code (ECC). For instance, under the art. 151 § 1 ECC which provides the possibility to conditionally suspend the execution of the prison sentence, the need to take care of one's next of kin is a vital argument for granting such decision.

Even though LGBT NGOs did not receive reports confirming discriminatory practices in these areas, this does not mean that the problem is non-existent. If we take into consideration the fact that in practice the disclosure of non-heterosexual orientation stigmatizes a person in the framework of the criminal procedure (as a victim, as a perpetrator or as a detainee), NGOs are of the opinion that the lack of

reports confirming discriminatory treatment may indicate the problem with the underreporting of such violations.

## Protection of Personal Data Referring to a Person's Sexual Orientation, Gender Identity or Sex Characteristics

Details of 'sexual life' belongs to so-called sensitive data, which - according to Polish law - is subject to special protection. Until May 25th, 2018 the Personal Data Protection Act (PDPA) was the main act establishing the system of data protection in Poland.<sup>150</sup> After that date it was substituted with a new PDPA which is supposed to implement to Polish national legal framework the General Data Protection Regulation. According to the former PDPA (which was in force for the most time covered by this research) it was prohibited to process data on 'sexual life' (which in practice covered information about sexual orientation) and data on 'state of health' (which in practice covered information about gender identity, but not data on gender expression) (Art. 27 (1) PDPA), except in a limited number of situations when this was allowed (Art. 27 (2) PDPA).

Also, according to Art. 22a(10) of the Act on the Central Anti-Corruption Bureau, the Central Anti-Corruption Bureau has a statutory obligation to destroy, with supervision and with records kept of the procedure, personal data, including data on 'sexual life', of all those who, after the proceedings have been conducted, have not been convicted of an offense.<sup>151</sup>

However, as regards to gender identity and sex characteristics, no special measures have been taken to provide explicit protection against collection of such data, especially of people undergoing legal gender reassignment. Also, former PDPA did not refer directly to the protection of data about people after change of gender marker. However the information concerning gender identity and sex characteristics should be considered to be particularly sensitive, as it belongs to the category 'health condition' which was also protected under Art. 27 (1) of a former PDPA. The protection of personal data of transgender persons is particularly complicated as the information about legal gender is usually revealed in different legal documents (i.e. birth certificates, diplomas). Therefore the effective protection of the information about person's gender identity is objectively weaker

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<sup>150</sup> Personal Data Protection Act of 29 August 1997 [Pol.: Ustawa o ochronie danych osobowych] (unified text of 17 June 2002, Journal of Laws No 101, item 926 as amended).

<sup>151</sup> Act of 9 June 2006 on the Central Anti-Corruption Bureau [Pol.: Ustawa o Centralnym Biurze Antykorupcyjnym] (Journal of Laws No 104, item 708 as amended).

comparing to the protection of information about person's sexual orientation.

In the period between 2012 and 2017 NGOs did not record any cases of the data collection activities that did not comply with the legal framework. Of course data on sexual orientation and gender identity was gathered by the public institutions, for instance by the law enforcement agencies and courts as an evidence in the case records. However NGOs did not detect any serious irregularities or violations in this area.

However, from the beginning of 2017 NGOs started obtaining information raising doubts whether some of the activities aimed at processing of personal data regarding sexual orientation and gender identity comply with legal limitations. More specifically, in January 18<sup>th</sup> 2017 the deputy Prosecutor General issued a recommendation, according to which all regional prosecutors should undertake activities aimed at obtaining information about two categories of pending cases:

- 1) on the registration of a foreign same-sex marriage certificates into Polish Civil Register Office and
- 2) on issuing a marital status certificates for persons who entered into same-sex marriage abroad.

The deputy Prosecutor General also ordered the prosecutors to join such proceedings to "guard the rule of law". These activities raised a deep concern of human rights defenders as the General Prosecution did not inform about the reasons or goals for processing this data. Moreover, it needs to be mentioned that at the time of issuing this recommendation (and also at the time of writing up of this report) there has not been a single administrative decision/court judgment registering a foreign same-sex marriage certificate into Polish Civil Register Office or issuing a marital status certificate for person who entered into same-sex marriage abroad. NGOs are of the opinion that this activity was aimed at creating a "chilling effect" that will discourage Polish citizens from applying for any form of legal recognition of their same-sex relations. In February 2017 the group of Polish NGOs sent a request to the Inspector General for Personal Data Protection (GIODO) asking for the verification whether such data collection complied with Polish legislation. The Inspector did not respond to this request.

It also needs to be mentioned that the authorities still have not resolved doubts concerning the storage of information gathered by the Communist Police in 1985-1987 as part of operation Hyacinth. Its purpose was to collect evidence against Polish gay men and the gay community. The police recorded approximately 11,000 personal files containing details of sexual life of Polish citizens. So far, it has not been established beyond doubt what happened to these files. Most probably, they have not been destroyed. Some of them were supposed to be handed over to the National Heritage Institute (the IPN), some are purportedly still stored in regional police headquarters.

Based on information provided by the IPN, the Institute has certain materials produced and collected in the scope of this operation. These materials are now in a separate archive at the disposal of the IPN President. They are part of the national archive resources and as such enjoy special protection from destruction. A person who is the subject of documents stored by the IPN may only request that their data that could reveal, among other things, the details of their sexual life, will not be made available. As for the collection of the data on gender identity during this operation, representatives of the authorities do not openly address this issue. However, historical information allows for a conclusion that transgender persons as well as people displaying gender non-conformity were also invigilated and registered as homosexuals. NGOs have no information concerning the number of applications filed with the IPN and IPN's decisions relating to the anonymisation of data gathered during this operation.

### Availability of Legal Gender Recognition in Poland and Its Conditions

Legal gender recognition procedure is available in Poland; however it is far from being quick, transparent and accessible and is not based of self-determination. It is a peculiar example of a procedure, which has not been regulated in legal provisions but is based solely on the precedent judgments of the Polish Supreme Court. A person applying for a legal gender reassignment has to bring a civil lawsuit against their parents based on art. 189 Code of Civil Procedure.<sup>152</sup> According to this article the plaintiff may demand that the court determine the existence or non-existence of a right where they have legal interest therein. Where either parent is dead or cannot join the proceedings, a curator (appointed to act on behalf and in best interest of a person without legal capacity or absent) is involved. Final court decision is the basis for correcting an entry in the relevant Civil Register Office records by making an additional remark in birth certificate. In other words, no new certificate is created, only amendments are made to the existing one.

Current procedure does not rely on self-determination and requires psychiatric diagnosis. Such diagnosis plays the central role during the legal proceedings. It has to be conducted by the psychiatrist-sexologist appointed as an expert by the court. To issue an opinion recommending legal gender recognition and diagnosing transsexualism, psychiatrists usually require prior hormone therapy, which, in the judicial practice, constitutes evidence that the legal interest of the person applying for legal gender recognition is valid. According to the experience of the KPH and the Trans-Fuzja foundation (arising from providing legal counselling for persons undergoing legal gender recognition) even though it is not mandatory to undergo any prior medical or surgical procedure (i.e. mastectomy) or treatment

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<sup>152</sup> Act of 17 November 1964, Code of Civil Procedure, Kodes Postępowania Cywilnego] (Journal of Laws No 43, item 296, as amended).

(hormonal treatment), such operations and treatments increase chances to receive positive diagnosis and a positive judgment of the court. This means that the Polish legal gender recognition procedure is still very strongly marked with medicalization, gatekeeping by doctors, and is not considered to be solely of legal nature.

As for the irreversible sterilisation, it is not a condition for gender recognition procedure in Poland. Moreover, it is prohibited before the completion of the legal gender reassignment procedure, as the person who will perform such surgery may face a charge of grievous bodily harm in a form that deprives the ability to procreate (art. 156 § 1 CrC). However, the irreversible sterilisation is possible (but not mandatory) after the completion of legal gender reassignment procedure.

According to the “Report on the legal situation of transgender persons in Poland” published in 2013 by the Polish Society for anti-Discrimination Law and the Trans-Fuzja foundation, although the procedures for legal gender recognition are slowly departing from the “real-life experience” test it seems that it is still counted by the courts among the most important types of evidence. This is of much importance since still there are no regulations concerning the length of the real-life test.

Also, the recent developments of the Supreme Court’s jurisprudence raise serious concerns among LGBT NGOs community.

#### **Case: Supreme Court and the legal gender recognition**

*In the judgement of December 6<sup>th</sup>, 2013 (case file no. I CKS 146/13) the Supreme Court stated that if a transgender person undergoing a legal gender recognition procedure has children, these children should also participate in the proceedings as defendants. This decision of the Supreme Court was criticized by NGOs and the RPO. The RPO has also decided to join one of the legal gender recognition proceedings in the case of a transgender person with children. Thanks to the RPO’s intervention the Appellate Court in Lodz decided (in its judgement of December 12<sup>th</sup>, 2017) not to follow the Supreme Court’s judgment. Eventually, the Appellate Court in Lodz recognized the legal gender of the claimant without the need to sue claimant’s children.*

Legal gender recognition is available regardless of age. However, if a person is under 18 years of age this person has to be represented in court by the curator (legal representative assigned by the court). The procedure is also available regardless of medical status or financial situation. Nevertheless, due to the fact that gender recognition treatment is not funded by the state, the scope of services that a transgender person can obtain from the public health institutions is limited. Also, a prior police record has no influence on the possibility to undergo legal gender recognition.

The above-mentioned procedures result in the violation of dignity of transgender person willing to recognize their legal gender. Current



state of affairs raised a deep concern of Polish NGOs. In 2012, Trans-Fuzja foundation, together with Anna Grodzka (first Polish transgender MP), prepared a bill of act on legal gender recognition, which was supposed to solve the most pressing issues arising from the current situation (i.e. resignation from the contradictory proceedings, that require suing own parents; establishing one court in Poland that to examine all applications for legal gender recognition). The act was adopted by the Parliament in September 2015. However it did not come into force as President Andrzej Duda (who was the candidate for presidency of the Law and Justice party, the same party that is currently in power) vetoed it.

### Legal Situation of a Person after Legal Gender Recognition

A court judgment, which recognizes person's legal gender, creates a basis for changing other documents. First of all, after obtaining this judgement, a person has to apply for a new PESEL (personal identification number). The new PESEL has to be issued as it indicates the gender of a person. After issuing a new PESEL the person is entitled to apply for a new ID, passport and driving license. However, according to the jurisprudence of the Supreme Court it is not possible to issue a new birth certificate. The Civil Register Office is allowed only to enter a remark to the original birth certificate in which the information about person's actual gender is indicated. Former gender description is still visible in the full version of the birth certificate. However, not everyone has access to the full version of this certificate, as it needs to be proven that person applying for such access has a 'legal interest' in it, e.g. requires this access for the inheritance proceedings.

Change of the other official documents has not been regulated so far. The only exception is the university diplomas, which according to the law can be changed after legal gender recognition. However, there are no legal mechanisms that would oblige non-state actors (especially employers) to amend such documents.

### The Right of Transgender Persons to Marry a person of the Sex Opposite to Their Reassigned Sex

Polish legislation does not address the issue of a right to marriage of transgender individuals. Art. 18 of the Polish Constitution only states that a marriage is a union between a man and a woman. Their gender is identified on the basis of the information gathered in the Civil Register Office.<sup>153</sup> The existence of remarks on gender reassignment does not affect the right to marry. A person who has completed a legal

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<sup>153</sup> Konstytucja Rzeczypospolitej Polskiej [The Constitution of the Republic of Poland], Dziennik Ustaw No. 78, item 483.

gender procedure can marry a person of the opposite gender (to their new gender).

However it is worth pointing out that recently the KPH and the Polish Society for Anti-Discrimination Law (PTPA) provided legal assistance to a trans-woman (before the gender reassignment) who wanted to marry her female fiancée. According to their birth certificates they had opposite gender characteristics. This circumstance should allow them to enter into marriage. Few days after filing an application for marriage in the local Civil Register Office they received a letter from the local Civil Register Office in which they were informed that due to concerns whether a transgender person (before the legal gender reassignment) can enter into a valid marriage Civil Register Office decided to send their application to the court to verify and resolve this issue. On June 25<sup>th</sup>, District Court for Lodz-Widzew in Łodz issued a decision (case file no. V RNs 63/18), in which the court stated that there are no legal obstacles for these applicants to enter into a marriage. According to information gathered by NGOs it was the first situation when the court had to issue a decision in such case. The KPH and the PTPA are of the opinion that the emergence of the Civil Register Office's 'concerns' may be a result of the recent political decisions (for instance the recommendation of the Prosecutor General who ordered prosecutors to join legal proceedings relating to same-sex relations), and generally can be perceived as an example of the "chilling effects" of these decisions.

## Legal Status of Unmarried Couples in Poland

As a matter of principle, Polish legal system does not regulate the rights and obligations of unmarried couples. Cohabitation remains merely a matter of fact, not law, and people living and running a household together out of wedlock (cohabiting partners) are in most cases considered unrelated for legal purposes.

However, there are few existing provisions that do address unmarried couples (for instance the right of the partner of a deceased tenant to succeed to the tenancy of a municipality flat, guaranteed under the art. 691 § 1 KC). After the year 2000 the courts slowly started delivering judgments in which they confirmed that same-sex cohabiting partners are also entitled to use these provisions.

### **Case: Understanding of the term "cohabitation"**

*The Appellate Court in Bialystok in court's judgement of February 23rd, 2007 (case file no. I ACa 590/06) stated that the term 'cohabitation' should be understood (for the needs of a settlement of the cohabitation) as a stable, actual personal-property community of two people, and that the genders of persons forming such relationship is irrelevant in this respect.*

### **Case: Housing allowances**

*The Voivodeship Administrative Court in Gliwice in the court's judgment of January 10th, 2008 (case file no. IV SA/GI 534/07)*

*stated that on the basis of act on housing allowances the circle of persons permanently residing and managing with a person applying for a housing allowance may include persons regardless of the of their sex and the opposite view finds no legal support and violates constitutional and European legal standards.*

**Case: Insurance**

*The Appellate Court in Warsaw in court's judgement of February 26th, 2014 (case file no. I ACa 40/16) stated that refusal to provide joint insurance for a same-sex partners, constitutes discrimination on the grounds of sexual orientation and a violation of dignity.*

**Case: Cohabitation**

*The Supreme Court in court's resolution of November 28th, 2012 (case file no. III CZP 65/12) decided that a person who stays in cohabitation with a tenant (within the meaning of art. 691 § 1 of the Civil Code) can also be a person of the same-sex.*

*Moreover, in the Supreme Court's resolution on February 25th, 2016 (Case file no. I KZP 20/15) the Supreme Court indicated that the difference of sex of cohabiting partners remaining is not a condition for recognizing them as the 'next of kin' for the needs of the Criminal Code.*

However, the legal protection of same sex-partners remains full of gaps and relies solely on the court precedent judgments. The recognition of same-sex relationship lacks a systemic character and it depends largely on the approach of the judge in a given case. This situation will not change until the adoption of a proper legislation, due to the fact that civil law character of the Polish legal system limits the possibility of strengthening the protection of same-sex partners solely through the court progressive judgements.

## Legal Recognition of Same-sex Couples in Poland

Polish law does not provide the institution of registered partnerships (neither for same-sex nor opposite-sex partners). National legislation also does not recognize such partnerships when they were concluded abroad. Polish legal system provides only the institution of marriage as a union between a man and a woman. According to progressive stances of the legal doctrine the Polish Constitution does not introduce so-called "constitutional blockade" for establishing the institution of same-sex partnership in the national legal system. Art. 18 of the Constitution (which is usually invoked in such occasions) states - only - that the marriage as a relation of a man and a woman stays "under special protection of the State".

Not only same-sex couples are deprived of the right to enter into registered partnerships, they cannot also use proper legal measures to solve the practical problems related to the social reality in which

they live. The most urging problems for same-sex partners living in Poland are as follows:

- no entitlement to file joint personal income tax declaration;
- no right to joint health insurance;
- no right to succeed to the partner's estate in cases of intestacy;
- the provisions on the inheritance and donation tax deem unmarried partners to be unrelated, with the tax rate and tax-exempted amounts less beneficial than in the case of inheriting the estate of one's spouse;
- no right to obtain social security benefits after deceased partner;
- no right to apply for survivor's pension on the same principles as spouses;
- no explicit right to bury one's partner;
- no adoption of a child by the partner of the child's birth parent.

As a result of the current situation, same-sex partners try to resolve some of the difficulties by concluding limited contracts (in the form of power of attorney) that enable them, for instance, to get access to partner's medical information or medical documentation.

Initiatives to introduce registered partnerships were taken on many occasions, starting from 2004. Since then draft bills aiming at resolving legal situation of same-sex partnerships (propositions included introduction of notary contracts or institution of registered partnerships) were lodged in the parliament regularly. Each time there was no political will to adopt the submitted bills. Also, during current parliamentary term, a draft bill on registered partnerships was filed by the opposition party Nowoczesna (Modern). It has not been voted on yet.

As for the right to obtain a residence permit for family reasons by the same-sex partner of the Polish citizen, it needs to be mentioned that in 2013 there were two legal proceedings resulting from the fact, that the border guard service refused such partners the right to enter Polish territory together with their Polish partners. In both two cases Polish authorities did not recognize them as partners. In each case the same-sex partner of the Polish citizen was a foreigner, which whom Polish citizen entered into same-sex registered partnership abroad. Both foreigners referred to their right to travel and reside on the territory of Poland, as they were the beneficiaries of the Directive 2004/38/EC. Eventually, the voivodeship administrative courts stated that in these cases the refusal of the Polish administrative bodies was violating these guarantees.

### Rights of the LGBT Parent to Maintain Relation with Child

There is no legislation in Poland providing the explicit obligation for the authorities that the decisions regarding parental responsibility should

be taken without discrimination based on sexual orientation or gender identity. However, there is also no law stipulating that parent's sexual orientation or gender identity has any effect on decisions concerning parental responsibility or contacts with a child. The primary consideration when taking decisions concerning the relationships between a parent and a child is the child's best interest, which forms the fundamental principle of Polish family law. It is spelt out several times in the Family and Guardianship Code (for instance in art. 58 § 1a or art. 93 § 2 KRO). In practice, arguments concerning parent's sexuality are repeatedly raised (explicitly or implicitly) by the parties of the custody proceedings. Also, opinions of expert witnesses and diagnostic centres involved in proceedings concerning parental responsibility refer sometimes to sexual orientation or gender identity as an argument against LGBT parents. Although they rarely refer to such personal characteristics directly, they contain statements (such as "lifestyle, i.e. living with her partner, girlfriend", "the necessity of the presence of both parents for the full development of the child", "emotional instability [of the parent]", or "maintaining contacts with the wrong community") that are at least indirectly expressing a negative assessment of such person's parenting competence.

### Access to Adoption

Polish national legislation does not permit unmarried different-sex couples to adopt a child (also each other's child), which also applies to unmarried same-sex couples. Under the Polish law only the married couple and a single person have a right to adopt a child. In practice marriages are preferred as providing better conditions for the full development of the child.

### Access to Assisted Reproductive Treatment Procedures

Until the end 2015 Polish law did not regulate access to medically assisted procreation. This situation allowed lesbian couples and single women to use the services of the clinics for the infertility treatment (among them insemination and in-vitro). During that period NGOs did not record single case of using these services by trans men.

However on November 2015 the act on the treatment of infertility (ULN) entered into force. The aim of ULN was to regulate the access to medically assisted procreation in a systemic manner. It focuses on marriages and heterosexual couples as the beneficiaries of the new legislation. However, the wording of the ULN does not exclude the possibility that lesbian couples and single women can still exercise the rights proclaimed in this legislation. For instance, there is no provision in the ULN does refer to a couple as a subject of the procedures of medically assisted procreation. Also, the ULN and does not impose an obligation to demonstrate prior attempts to fertilize by intercourse.

However, information provided by clients of the KPH legal counselling show that since the entry of the ULN into force the clinics for the

infertility treatment started refusing them the right to use their services. KPH is of the opinion that this new approach of the clinics is a consequence of the statement issued by the Ministry of Health. According to this statement the intention of the legislator was to allow the access to medically assisted procreation only for marriages and opposite-sex couples. It is also worth mentioning that according to the ULN the Ministry of Health plays crucial role in issuing certificates required to provide services of medically assisted procreation. NGOs are of the opinion that this situation is also an example of the “chilling effect” aimed at weakening the family rights of the LGBTI persons in Poland. NGOs are also not aware of any pending cases aimed at verifying the legality of this new policy of clinics. However, according to information obtained from KPH clients, current situation results in development of the black market of such services in Poland, as well as more frequent trips to other countries in order to get access to such clinics.

## Recommendations

1. Introducing national laws regulating relationships between persons of the same-sex preferably in the form of marriage equality or at least in the form of registered partnerships with the comprehensive catalogue of rights and obligations.
2. Introducing national laws regulating the procedure of legal gender reassignment; such law should implement the latest international standards of human rights in this area, in particular the Yogyakarta Principles, and should include no prerequisites for any physical changes, including hormone therapy.
3. Establishing a legal practice ensuring the effective right to use services of medically assisted procreation (provided within the framework of the Act on the infertility treatment), regardless of the sexual orientation and gender identity of the patients.

## V. Employment

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*Karolina Gierdal*

- The area of employment seems to be the only one where the discrimination based on sexual orientation and gender identity is prohibited. In case of sexual orientation this protection can be interpreted directly from the legal provisions. In case of gender identity this protection is indirect. However, the doctrine of law and jurisprudence stipulates that unequal treatment based on gender identity should be treated as a discrimination on the grounds of sex.
- Specific LGBT groups (lesbian and bisexual women, persons of color or ethnic minority backgrounds or persons with disabilities) are not protected in a special way due to the greater risk of experiencing discrimination. There are no known non-legal measures provided by the state that would be aimed at preventing such discrimination.
- Even though the legal framework protecting against discrimination of LGBT employees should be assessed positively, the research conducted by the NGOs show that employees rarely take legal action on the grounds of being discriminated against in the area of employment. Among other factors, the fear of disclosing sexual orientation or gender identity plays a significant role.

### Introduction

The area of employment seems to be the only one where the discrimination based on sexual orientation is directly prohibited. Three statutes – Labour code (LC),<sup>154</sup> the Promotion of Employment Act<sup>155</sup> and the Equal Treatment Act<sup>156</sup> all mention sexual orientation as one of the grounds of unlawful discrimination. These Acts introduced several significant anti-discrimination law provisions, such as direct discrimination, indirect discrimination, multiple discrimination, harassment, sexual harassment, and reversed burden of proof (burden of proof shifted to the employer in proceedings concerning discrimination). All of them apply to the situation of violation of the equal treatment principle in employment motivated by homophobia.

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<sup>154</sup> Act of 26 June 1974, The LC [Pol.: KP, Kodeks Pracy] (unified text of 23 December 1997, Journal of Laws 1998 No 21, item 94, as amended).

<sup>155</sup> Act of 20 April 2004 on promotion of employment and labour market institutions [Pol.: Ustawa o promocji zatrudnienia i instytucjach rynku pracy] (unified text of 9 April 2008, Journal of Laws No. 69, item 415).

<sup>156</sup> Act of 3 December of 2010 on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment [Pol.: Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania] (Journal of Laws No 254, item 1700).



## Protection of LGB Workers Against Discrimination

The Labor Code (LC) prohibits any discrimination in employment, direct or indirect, on the grounds of, including but not limited to, sexual orientation (art. 11<sup>3</sup> LC). It applies both to private and public sector. The act also introduces the concept of equal treatment in employment which is violated if, inter alia, LGB employees are subject to unjustified unequal treatment regarding access to employment, its termination and working conditions (including promotion, pay, access to training in skill development) – art. 18<sup>3a</sup> – 18<sup>3d</sup> LC. Among the forms of discrimination, LC lists harassment, including sexual harassment. These are prohibited under art. 183a(5)(2) and art. 183a(6) LC. To safeguard this prohibition, an employer is obliged to counteract such discrimination (Art. 94 LC). A violation of the principle attracts liability to damages (Art. 18<sup>3d</sup> LC).

In the event of termination of employment that may qualify as discriminatory, an employee may file for the following: 1) the declaration of the notice of termination ineffective, 2) reinstatement on employee's previous position (on the same conditions), or 3) damages (Art. 45(1), Art. 56(1) LC). Where an employer gravely violates employer's basic obligations towards an employee, the latter may terminate the employment contract without notice and claim reasonable damages (Art. 55(1)1 LC). The fact that an employee has exercised any of employee's rights referred to above may not justify any unfavourable treatment by the employer, including when an employee has provided any support to a person exercising employee's rights in respect of a violation of the principle of equal treatment in employment (Art. 18<sup>3e</sup> LC).

Anti-discrimination provisions also regulate the scope of information that a candidate or an employee may be obliged to disclose to their employer. The catalogue of data subject to such disclosure in Art. 22<sup>1</sup>(1-2) LC does not include sexual orientation.

## Regulations Guarantying Equal Access to Labor Market Services and Instruments

Promotion of Employment Act specifies state's obligations concerning the promotion of employment, mitigation of the effects of unemployment and occupational activation. It is based on the concept of equal treatment in access to labor market services and instruments (art. 2<sup>a</sup>). The statute forbids discrimination on grounds of sexual orientation by any public or private labor market service institutions, including employment agencies or offices [art. 19<sup>c</sup>, 36(4), 36<sup>a</sup>(3), 38(2), 40(6)]. The statute also imposes obligations on employment offices, which, under Art 36(5c) of the Act, cannot accept a job offer if any of the employer's requirements may be discriminatory towards jobseekers, including on the ground of sexual orientation. Violation of some of the anti-discriminatory provisions may result in fine, starting from 3000 PLN [art. 121 (3)].



## Protection of LGB Civil-Law Contractors (Non-Workers) Against Discrimination

The third statute, Equal Treatment Act, implement certain EU directives. With its coming into effect, the scope of protection against discrimination on the grounds of sexual orientation was extended to include the following areas (Art. 8): vocational training and retraining, including practical work experience; taking up or running business or vocational activity, including as part of employment relationship or employment based on a civil-law contract; joining and being active in trade unions, employer's organizations, and professional organizations, and to exercise the rights enjoyed by their members; and the access to and conditions of using labour market instruments and services. The violation of the anti-discrimination provisions may result in liability for damages (art 13).

## Protection of Transgender Persons Against Discrimination in the Workplace

The ground of gender identity is not explicitly covered by any of the anti-discrimination provisions in the acts above. However, the specific provisions e.g. in Labour Code prohibit discrimination on any ground. The doctrine of law and jurisprudence stipulates that unequal treatment based on gender identity should be treated as a discrimination on the grounds of sex<sup>157</sup>, which is explicitly forbidden in all three acts mentioned above.

### **Case: unlawful termination of a civil law contract with a transgender employee**

*In 2017 a transgender person decided to apply for the position offered by one of the Polish biggest security companies. At the time of applying she was undergoing the process of legal gender reassignment and her legal gender marker did not match with her gender identity. After successfully going through the recruitment procedure she was assigned to work and was supposed to wait for the call with further instructions from her supervisors. However, soon after she was informed that due to her gender identity her contract was terminated. After receiving legal assistance from the KPH the victim brought a lawsuit against the company (based on the protection against discrimination on the grounds of sex, guaranteed in the Equal Treatment Act). The court decided to refer the case to mediation. During the mediation meeting in July 2018, both parties reached an agreement. The company will pay*

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<sup>157</sup> Aleksandra Szczerba, 'Prawne aspekty ochrony osób transpłciowych w zatrudnieniu [The legal aspects of protecting transgender persons in employment]', in: Krzysztof Śmiszek [ed.] *Dyskryminacja ze względu na orientację seksualną i tożsamość płciową w zatrudnieniu [Discrimination based on sexual orientation and gender identity in employment]*, (Warsaw, KPH 2010) p. 16

*compensation to former employee and organize a workshop about the equal treatment principle for company's employees.*

## Lack of the additional protection measures addressing the heightened vulnerability of specific LGBT groups

It should be noted that specific LGBT groups are not protected in a special way due to the greater risk of experiencing discrimination. There are no known non-legal measures provided by the state that would be aimed at preventing such discrimination. In 2015, before the general elections, Government Plenipotentiary for Equal Treatment published a short handbook for employers and employees about discrimination on the grounds of sexual orientation<sup>158</sup>, but it was focused on providing general information about the legal provisions in Polish law. NGOs are of the opinion that since there are no special measures taken to protect the specific LGBT persons, the heightened vulnerability of specific LGBTI groups is not recognized at all by the state actors. In general, multiple discrimination is not regarded as a major problem that requires attention and active measures from the authorities. All the groups, including lesbian and bisexual women, persons of color or ethnic minority backgrounds or persons with disabilities must rely on the same provisions and legal measures. Polish law does not criminalize sex workers, but they are not actively protected.

## Protection of the Sensitive Data of the Transgender Employees

Some of the provisions in Labor Code may be regarded as protective over transgender persons. It is forbidden to place job advertisements that have gender criteria. The employer cannot ask a job applicant to provide information about applicant's gender or disclose a CV with a photograph - art. 22<sup>1</sup> (1) LC. The problem arises when a transgender person is asked to disclose documents regarding their education or previous experience. Obtaining a judgment which reassigns person's legal gender does not create a basis to change documents issued by non-state actors, employers included<sup>159</sup>.

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<sup>158</sup> PRT, Discrimination on the grounds of sexual orientation – a handbook for employers, Discrimination on the grounds of sexual orientation – a handbook for employees, (Warsaw: PRT 2015), (<https://www.spoleczenstwoobywatelskie.gov.pl/dyskryminacja-ze-względu-na-orientację-seksualną-w-zatrudnieniu>),

<sup>159</sup> see more in section IV, p. 54

## Protection of LGBT employees in theory and in practice

Even though the legal framework protecting against discrimination of LGBT employees should be assessed positively, the research conducted by the NGOs show that employees rarely take legal action on the grounds of being discriminated against in the area of employment<sup>160</sup>. From the experience of KPH this can be attributed to a number of factors, including lack of knowledge about anti-discriminatory provisions, general reluctance to court proceedings, lack of other job opportunities and fear of losing current employment after suing the employer. c According to research, 71% of LGBT persons disguise their sexual orientation or gender identity in the workplace<sup>161</sup>. The fear is justified, since many of them are subject to unfavored treatment by employers and co-workers – which includes negative comments and mockery, exclusion from the group of employees<sup>162</sup>.

## Recommendations

- 3) Broadening the catalogue of the protected grounds in the existing labour laws by adding the gender identity as protected characteristics to the Labour Code, the Act on employment promotion and labour market institutions and the Act on Equal treatment.
- 4) Intensifying actions by developing prevention strategies and programs to promote the knowledge about the equal treatment principle as well as measures to combat discrimination in employment based on sexual orientation and gender identity.

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<sup>160</sup> The number of employment discrimination lawsuits filed to Polish courts: in 2011 – 913, 2012 – 933, 2013 – 847, 2014 – 977, 2015 – 674, 2016 – 762, 2017 – 597. The numbers include all grounds of discrimination. Statistics available at Ministry of Justice website: <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,4.html>, accessed 28 July 2018

<sup>161</sup> M. Świder and M.j Winiewski, eds., 'Sytuacja Społeczna Osób LGBT. Raport Za Lata 2015 – 2016 [The Social Situation of LGBT People. Report for the Years 2015 - 2016]' (Warsaw: KPH, 2017)

<sup>162</sup> M. Makuchowska, M.Pawłęga (eds.), 'Sytuacja społeczna osób LGBT w Polsce. Raport za lata 2010-2011, [The social situation of LGBT people in Poland/ Report for the Years 2010 – 2011]', (Warsaw: KPH 2012)

## VI. Education

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*Piotr Godzisz*

- Discrimination and violence based on sexual orientation, gender identity and gender expression are widespread in Polish schools. Few LGBT students and teachers come out due to fear of becoming targeted.
- There have been cases of suicides of children who were victims of anti-LGBT bullying.
- Legislative and policy solutions aimed at preventing and responding to homophobia and transphobia in education are lacking. There is no government leadership to make schools and universities safe for LGBT students and staff.
- Anti-discrimination training is absent from standard specialized professional education for teachers. Training or support and teaching aids are provided occasionally by NGOs.
- School policies and action plans rarely consider equality and safety of LGBT students and staff. A few schools and universities developed anti-discrimination standards in cooperation with NGOs.
- Cooperation between LGBT NGOs and schools, as well as some initiatives in education to support diversity and respect for LGBT people meet with hostility from local communities, conservative NGOs and right-wing media.
- There have been cases of persecution of students and teachers who were involved in an anti-discrimination project.
- Objective information about sexual orientation, gender identity or sex characteristics is rarely included in school curricula.
- Respect for the self-determined name and gender marker of pupils and students depends on the school.
- Positive initiatives in education aimed at supporting diversity and respect for LGBT people are effect of personal commitment of select education professionals rather than systematic efforts.

### Prevalence of Discrimination and Violence Based on SOGIE in Education

Intolerance based on sexual orientation, gender identity and gender expression are widespread in Polish schools. According to the recent survey by the Centre for Research on Prejudice of the University of Warsaw among young Poles, fewer than one in four (21 per cent) of male and four in ten (40 per cent) of female respondents said they would accept a transgender person as a family member. Slightly more favourable, but still rather negative, were attitudes towards gay men, with 25 of young men and 54 of young women accepting them as family members. Attitudes towards lesbians as family members were

more positive (43 and 55 per cent).<sup>163</sup> Hate speech targeting LG people is common (there is no research about hate speech on BT people). 84 per cent of respondents saw hate speech targeting gay men on the internet, while 56.3 per cent said that they encountered such acts during conversations with friends.<sup>164</sup>

Low levels of acceptance of sexual and gender diversity are reflected in victimization surveys and other, both qualitative and quantitative studies, which report high levels of discrimination and violence based on SOGI. According to the recent “Report on the social situation of LGBT people in Poland 2015-2016”, school was the most common place indicated by young respondents who experienced violence as the location where the violence occurred (26 per cent of all cases).<sup>165</sup> In 19.1 per cent of cases perpetrators of violence were schoolmates.<sup>166</sup>

Considering non-survey research, many cases of discrimination, violence and hate speech based on sexual orientation and gender identity were identified in three studies conducted by the Society for Anti-Discrimination Education (TEA).<sup>167</sup> Interviews with school students

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<sup>163</sup> Mikołaj Winiewski et al., *Mowa Nienawiści, Mowa Pogardy. Raport z Badania Przemocy Werbalnej Wobec Grup Mniejszościowych*, 2016, 75–77, [http://www.batory.org.pl/upload/files/pdf/MOWA\\_NIENAWISCI\\_MOWA\\_POGARDY\\_INTERNET.pdf](http://www.batory.org.pl/upload/files/pdf/MOWA_NIENAWISCI_MOWA_POGARDY_INTERNET.pdf).

<sup>164</sup> Winiewski et al., 51–53.

<sup>165</sup> Magdalena Świder and Mikołaj Winiewski, eds., *Sytuacja Społeczna Osób LGBT. Raport Za Lata 2015 – 2016 [The Social Situation of LGBT People. Report for the Years 2015 - 2016]* (Warszawa: KPH, 2017), 130, <https://drive.google.com/file/d/1b4KKia7c3CIC9DcJLQ8WQy7-qdw5pB/view>.

<sup>166</sup> Świder and Winiewski, 134.

<sup>167</sup> Magdalena Chustecka, Małgorzata Dymowska, and Ewa Stoecker, ‘Dyskryminacja w Szkole Oczami Młodzieży – Na Podstawie Wywiadów Grupowych z Uczennicami i Uczniami Gimnazjów Oraz Szkół Ponadgimnazjalnych’, in *Dyskryminacja w Szkole – Obecność Nieusprawiedliwiona O Budowaniu Edukacji Antydyskryminacyjnej w Systemie Edukacji Formalnej w Polsce. Raport z Badań*, ed. Katarzyna Gawlicz, Paweł Rudnicki, and Marcin Starnawski (Warszawa: Towarzystwo Edukacji Antydyskryminacyjnej, 2015), 79–130, [http://www.tea.org.pl/userfiles/raporty/raport\\_tea\\_dyskryminacja\\_w\\_szkole.pdf](http://www.tea.org.pl/userfiles/raporty/raport_tea_dyskryminacja_w_szkole.pdf); Marta Rawłuszko, ‘Dyskryminacja, Przemoc i Mowa Nienawiści w Społecznościach Szkolnych – Charakterystyka Zjawiska Oraz Strategie Przeciwdziałania Na Podstawie Wywiadów z Nauczycielami i Nauczycielkami Ze Wsi Oraz Małych i Średnich Miast’, in *Dyskryminacja w Szkole – Obecność Nieusprawiedliwiona O Budowaniu Edukacji Antydyskryminacyjnej w Systemie Edukacji Formalnej w Polsce. Raport z Badań*, ed. Katarzyna Gawlicz, Paweł Rudnicki, and Marcin Starnawski (Warszawa: Towarzystwo Edukacji Antydyskryminacyjnej, 2015), 131–94, [http://www.tea.org.pl/userfiles/raporty/raport\\_tea\\_dyskryminacja\\_w\\_szkole.pdf](http://www.tea.org.pl/userfiles/raporty/raport_tea_dyskryminacja_w_szkole.pdf); Małgorzata Jonczy-Adamska and Marta Rawłuszko, ‘Dyskryminacja i Działania Antydyskryminacyjne w Szkołach Na Podstawie Danych Systemu Ewaluacji Oświaty’, in *Dyskryminacja w Szkole – Obecność Nieusprawiedliwiona O Budowaniu Edukacji Antydyskryminacyjnej w Systemie Edukacji Formalnej w Polsce. Raport z Badań*, ed. Katarzyna Gawlicz, Paweł Rudnicki, and Marcin Starnawski (Warszawa: Towarzystwo Edukacji Antydyskryminacyjnej, 2015), 263–362,

found that boys whose gender expression differs from stereotypically masculine are most vulnerable to discrimination at school, including violence.<sup>168</sup> Another qualitative study, commissioned by the Office of the Commissioner for Human Rights, also found high level of LGBT-phobia among school students. The report concluded that “students with tolerant attitudes towards homosexual persons are clearly a minority”.<sup>169</sup>

Negative attitudes, lack of role models and support (see below) results in the fact that few LGBTI students and teachers come out due to fear of becoming targeted. Only 26.8 per cent of students are completely ‘out’ in their school environment, the rest feels the need to conceal their sexual orientation in some way<sup>170</sup>. The negative attitudes take toll on the well-being of LGBT pupils and students. According to the “Report on the social situation of LGBT people in Poland 2015-2016”, seven out of 10 LGBT school youth reported feeling “alone” (70 per cent). 69.4 per cent reported having suicidal thoughts.<sup>171</sup> 72 per cent of students felt that they had to hide their sexual orientation or gender identity at school at least in some situations.<sup>172</sup>

In some cases, teachers make openly LGBT-phobic statements. In a small number of cases reported by participants in the “Social situation” research teachers were perpetrators of anti-LGBT violence.<sup>173</sup>

#### **Case: Homophobic history teacher from Gdańsk**

*A history teacher from Gdańsk, who is also a member of the city council, participated in a crowd which tried to block the Equality*

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[http://www.tea.org.pl/userfiles/raporty/raport\\_tea\\_dyskryminacja\\_w\\_szkole.pdf](http://www.tea.org.pl/userfiles/raporty/raport_tea_dyskryminacja_w_szkole.pdf); Marta Rawłuszko, ‘Dyskryminacja w Szkole Na Podstawie Doniesień Medialnych’, in *Edukacja Antydyskryminacyjna Ostatni Dzwonek! O Deficytach Systemu Edukacji Formalnej w Obszarze Przeciwdziałania Dyskryminacji i Przemocy Motywowanej Uprzedzeniami Raport z Badań*, ed. Magdalena Chustecka, Elżbieta Kielak, and Marta Rawłuszko (Warszawa: TEA, 2016), 99–138, [http://www.tea.org.pl/userfiles/raporty/tea\\_raport\\_www\\_final.pdf](http://www.tea.org.pl/userfiles/raporty/tea_raport_www_final.pdf).

<sup>168</sup> Chustecka, Dymowska, and Stoecker, ‘Dyskryminacja w Szkole Oczami Młodzieży – Na Podstawie Wywiadów Grupowych z Uczennicami i Uczniami Gimnazjów Orz Szkół Ponadgimnazjalnych’, 100.

<sup>169</sup> Łukasz Jurczyszyn and Andrzej Stefański, *Informacja o Wynikach Badania Jakościowego Wśród Młodzieży Na Temat: „Różnić Się Nie Oznacza Nienawidzić Się. Mniej Wrogości Poprzez Wiedzę o Prawach Człowieka i Dialog”* (Rzecznik Praw Obywatelskich, 2017), 6, <https://www.rpo.gov.pl/pl/content/roznic-sie-nie-oznacza-nienawidzic-sie-mniej-wrogości-poprzez-wiedze-o-prawach-człowieka-i-dialog>.

<sup>170</sup> Świder and Winiewski, 51.

<sup>171</sup> Świder and Winiewski, *Sytuacja Społeczna Osób LGBT. Raport Za Lata 2015 – 2016 [The Social Situation of LGBT People. Report for the Years 2015 - 2016]*, 132.

<sup>172</sup> Świder and Winiewski, 130.

<sup>173</sup> Świder and Winiewski, *Sytuacja Społeczna Osób LGBT. Raport Za Lata 2015 – 2016 [The Social Situation of LGBT People. Report for the Years 2015 - 2016]*.



*March parade in Gdańsk in 2015. She shouted anti-gay remarks through a megaphone (e.g. “homosexuality is a manifestation of moral deterioration and a preference”) and asked the police to “deal with those faggots, not with us”. The school’s principal refused to discipline the teacher. Both the teacher and the principal are affiliated with the PiS party.<sup>174</sup>*

*TEA asked education authorities and the Pomeranian voivode (representative of the government in the voivodeship), who supervises the disciplinary committee for teachers, whether the teacher is fit to work with children. The voivode responded only that that the explanatory proceedings aimed at finding out if there was an “abuse of dignity of the profession and / or violation of the teacher’s duties” were discontinued.<sup>175</sup>*

Data on LGBTI-phobic incidents at school, such as discrimination, bullying or physical violence is not collected by the government or any other public body. Each year, LGBT organizations receive several reports of incidents targeting school students. Lambda and the KPH publish annual reports on hate-motivated incidents.<sup>176</sup> In recent years, there have also been two cases of publicized suicides of teenagers who experienced homophobic bullying.

***Case: Suicide of a teenage victim of homophobic bullying in Biezuń (Mazovian region) <sup>177</sup>***

*May 2015, Biezuń. A 14-year old boy named Dominik Szymański committed suicide after long-lasting harassment and physical abuse in his school. In his last letter addressed to his mother he admitted he felt like “nothing”. He also made a list of his “friends” and “enemies” naming few of his class mates. His mother reported that her son had experienced school bullying and violence. He was humiliated as “faggot” and mistreated/harassed because of his*

<sup>174</sup> Katarzyna Włodkowska, ‘Żadnych konsekwencji dla nauczycielki z PiS za słowa o “pedałach”’, [trojmiasto.wyborcza.pl](http://trojmiasto.wyborcza.pl/trojmiasto/1,35612,18934764,gdansk-zadnych-konsekwencji-dla-nauczycielki-z-pis-za-slowa.html), 30 September 2015, <http://trojmiasto.wyborcza.pl/trojmiasto/1,35612,18934764,gdansk-zadnych-konsekwencji-dla-nauczycielki-z-pis-za-slowa.html>.

<sup>175</sup> Magdalena Chustecka, ‘Reakcje Instytucji Oświatowych Na Dyskryminację w Szkołach’, in *Edukacja Antydyskryminacyjna Ostatni Dzwonek! O Deficytach Systemu Edukacji Formalnej w Obszarze Przeciwdziałania Dyskryminacji i Przemocy Motywowanej Uprzedzeniami Raport z Badań*, ed. Magdalena Chustecka, Elżbieta Kielak, and Marta Rawłuszko (Warszawa: TEA, 2016), 178–79, [http://www.tea.org.pl/userfiles/raporty/tea\\_raport\\_www\\_final.pdf](http://www.tea.org.pl/userfiles/raporty/tea_raport_www_final.pdf).

<sup>176</sup> Piotr Godzisz, Paweł Knut, and Magdalena Świder, eds., ‘Submission to ODIHR Hate Crime Reporting 2015’ (Lambda Warsaw, KPH, November 2016), [http://kph.org.pl/wp-content/uploads/2016/11/LAMBDA\\_KPH\\_OSCE\\_raport\\_2016\\_11\\_17\\_.pdf](http://kph.org.pl/wp-content/uploads/2016/11/LAMBDA_KPH_OSCE_raport_2016_11_17_.pdf); Magdalena Świder, Marta Rawłuszko, and Piotr Godzisz, eds., ‘Submission to ODIHR Hate Crime Reporting 2016’ (Lambda Warsaw, KPH, April 2017), <https://drive.google.com/file/d/1sne0D2VUle5n36H5J-aULTio85Fd5Ue4/view>.

<sup>177</sup> Godzisz, Knut, and Świder, ‘Submission to ODIHR Hate Crime Reporting 2015’, 5; Chustecka, ‘Reakcje Instytucji Oświatowych Na Dyskryminację w Szkołach’, 172.

*well-groomed hairstyle and way of dressing. The school teachers knew about violence but took little or no action at all. The suicide was reported to the police. The Minister of Education condemned, for the first time, homophobia in school. The audit conducted by the School Superintendent found many inadequacies in the school's policies and practice and proposed corrective measures. Nonetheless, the measures did not include specific questions of raising awareness of teachers and students of discrimination and violence based on sexual orientation or reacting to such incidents.*

**Case: Suicide of a teenage victim of homophobic bullying in Gorczyn (Łódź region)**

*September 2017, Gorczyn. Kacper, 14-year-old boy committed suicide after long-lasting harassment and physical abuse in his school. According to information revealed by media teachers never intervened despite the bullying going on for a long time. The school's principal was aware of the fact that Kacper had faced problems and asked to be transferred to another class.<sup>178</sup>*

Considering reactions to reported cases of discrimination and bias-motivated violence, in most cases in the study conducted by TEA affected students were offered psychological counselling.<sup>179</sup> According to the experience of LGBT organizations, students and teachers who complain about LGBT-phobia at school usually turn to LGBT NGOs, such as the KPH or Lambda Warsaw.

**Case: Homophobic bullying recognized as a violation of dignity by court**

*Warsaw, 2011-2012. A male high school student, Jakub, who came out as gay at school was continuously physically and verbally harassed by his peers. Schoolmates used offensive insults against him, ridiculed him and threw fruit scraps, rubber bands, pens and stones at him. The student's backpack was hidden, and homophobic stickers were placed in the school corridor. The student informed teachers and school management about these behaviours and events at several occasions. The school did nothing to improve the situation of the student and stop the homophobic bullying. Moreover, one teacher told the student that he should not be surprised that others are laughing at him and insulting him for being gay. Another teacher, when asked for help by the victim, said that he was unable to change the behaviour of the students.*

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<sup>178</sup> Tomasz Ławnicki, "Miał tego pecha, że urodził się gejem w Polsce". W przejmującym wpisie Dehnel ujawnia kulisy śmierci 14-letniego Kacpra' (*naTemat.pl*, 18 September 2017) <<http://natemat.pl/217885,mial-tego-pecha-ze-urodzil-sie-gejem-w-polsce-nie-zyje-14-letni-kacper-chlopak-zaszczuty-w-dwoch-szkolach>> accessed 30 July 2018.

<sup>179</sup> Chustecka, 'Reakcje Instytucji Oświatowych Na Dyskryminację w Szkołach', 201.



*Despite complaints from homophobic violence, none of the students was even admonished.*

*The District Court in Warsaw ruled in 2017 that the school violated the personal rights of its former student and obliged the school to publish an apology, inter alia, on its website. In the justification of the verdict, the court pointed out that “objectively looking at the use of vulgarisms such as “faggot, poof (...), homo, paedophile, fag”<sup>180</sup> is not a manifestation of freedom of speech or criticism, but a behaviour that is degrading, mocking and defamatory to human dignity that has no rational justification.” The school brought an appeal against the verdict. The Court of Appeal in Warsaw upheld the sentence.<sup>181</sup>*

## Legal and Other Appropriate Measures Addressed to Educational Staff and students

The Anti-Discrimination Act does not provide protection against discrimination in education on the grounds of sexual orientation, gender identity, gender expression or sex characteristics. There are no legal provisions that mention SOGIESC as possible grounds for discrimination in the formal education system. Persons looking for protection against discrimination at school must refer to general provisions on the protection of personal rights (especially to art. 23 and 24 of the Civil Code providing protection against violation of personal rights).

Schools are not legally obliged to include anti-discrimination education in the school curriculum. The obligation to conduct ‘anti-discrimination activities involving the entire school or institution community’, introduced under the previous government, was removed in August 2017 by the minister of education.<sup>182</sup> The change was heralded as a success by the right-wing think tank Ordo Iuris.<sup>183</sup>

Since the last reform of education in 2016<sup>184</sup>, regional school superintendents, responsible for supervision of the implementation of school curricula, are chosen by the Minister, as opposed to the open

<sup>180</sup> Polish “pedał, ciota (...), homoś, pedofil, pedzio”.

<sup>181</sup> Appellate Court in Warsaw, judgment of November 17, 2017, case file no I ACa 1372/16.

<sup>182</sup> Rozporządzenie Ministra Edukacji Narodowej z dnia 11 sierpnia 2017 r. w sprawie wymagań wobec szkół i placówek, Dz.U. 2017 poz. 1611, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20170001611>

<sup>183</sup> Nikodem Bernaciak et al., *Chrońmy Dzieci! Podsumowanie Kampanii*, ed. Olaf Szczypiński, 2nd ed. (Ordo Iuris), 8, accessed 7 June 2018, <https://www.ordoiuris.pl/rodzina-i-malzenstwo/podsumowanie-akcji-chronmy-dzieci>.

<sup>184</sup> Dziennik, ‘Większość nowych kuratorów to ludzie PiS. Prezes ZNP: Takiej czystki jeszcze nie było’, [edukacja.dziennik.pl](http://edukacja.dziennik.pl/aktualnosci/artykuly/515803,nadzor-oswiatowy-kuratorium-czystki-w-kuratoriach-nowi-kuratorzy-pis.html), accessed 30 June 2018, <http://edukacja.dziennik.pl/aktualnosci/artykuly/515803,nadzor-oswiatowy-kuratorium-czystki-w-kuratoriach-nowi-kuratorzy-pis.html>.

competitions. This increases the risk of "politicization" of education in schools.

## Political Leadership

There is no political climate conducive to the implementation of relevant equality policies in the educational system. The Ministry of National Education is unwilling to cooperate with civil society organizations representing the LGBTI community. Although many attempts of contact were undertaken by the organizations, no cooperation exists. The last meeting request sent to the Ministry in April 2018 was left without a reply.

Government ministers and representatives of the parliamentary majority rarely express sympathy towards gender and sexual diversity and condemn acts of homophobia or transphobia. One such case was recorded in 2015 (see below). In some cases, the language used by politicians can be described as inflammatory.

### **Case: Minister of Education verbally condemns homophobia**

*In 2015, during a vigil held in front of the ministry of education in remembrance of a teenage victim of homophobic bullying who committed suicide (see case above), the then minister of education Joanna Kluzik-Rostkowska condemned homophobia saying that "homophobia is an evil and shouldn't have place in Polish schools."<sup>185</sup>*

### **Case: Minister of Education against sex education**

*In 2016, the minister of education Anna Zalewska, asked about the education reform, expressed belief that sexual education should be domain of parents rather than schools. She said: "I think that sex education [should be taught] primarily at home."<sup>186</sup>*

### **Case: Lack of government's reaction to a suicide of a bullied teenager**

*In 2017, government officials failed to condemn homophobia following the suicide death of another teenage victim of homophobic bullying (see case above).*

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<sup>185</sup> KPH, 'Minister edukacji potępiła homofobię! Co się wydarzyło pod MEN, gdy palono znicze dla Dominika', *Kampania Przeciw Homofobii* (blog), 3 July 2015, <https://kph.org.pl/minister-edukacji-potepila-homofobie-co-sie-wydarzylo-pod-men-gdy-palono-znicze-dla-dominika/>.

<sup>186</sup> Polsat News, 'Zalewska: edukacja seksualna to przede wszystkim w domu', <http://www.polsatnews.pl/wiadomosc/2016-09-22/zalewska-edukacja-seksualna-to-przede-wszystkim-w-domu/>.

**Case: Krystyna Pawłowicz MP's comments after the suicide of a bullied teenager**

*In 2017, following the suicide of a teenager who was bullied at school, a prominent member of the ruling party (PiS), Krystyna Pawłowicz MP commented wrote:*

Liberal and leftist circles first propagate unnatural attitudes and relationships among children and adolescents susceptible to various non-standard behaviours, and then when these disturbed behaviours are brutally reproached by peers, and in extreme situations end tragically, the left ideologues of moral pathologies turn the cat's tail and falsely, brazenly lament the "murderous intolerance" of peers. Don't sow pathology, then there won't be its deadly harvest. Don't demoralize children and young people, give them peace, to experience their childhood and youth in accordance with nature.<sup>187</sup>

*Following the comment, the MP was reported to the Sejm's Ethics Committee by two opposition parties.<sup>188</sup> The proceedings are ongoing.*

The Ministry of National Education has never discussed publicly the situation of students or students vulnerable to discrimination based on their gender expression. Sex characteristics have never been explicitly discussed in the context of education.

## Anti-discrimination Training or Support and Teaching Aids

There is no systematic training of any category of teachers or other school staff on issues connected with sexual orientation, gender identity or expression or sex characteristics. Some training is available at specific institutions for some professionals, such as school counsellors.<sup>189</sup> This training is, however, not part of standard specialized professional education. Rather, training or support and

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<sup>187</sup> Cited in: Ludmiła Anannikova, 'Pawłowicz o samobójstwie 14-letniego Kacpra: Lewacy bezczelnie lamentują nad morderczą nietolerancją', wyborcza.pl, 24 September 2017, <http://wyborcza.pl/7,75398,22417595,pawlowicz-o-samobojstwie-14-letniego-kacpra-lewacy-bezczelnie.html>.

<sup>188</sup> Natalia Durman, 'Pawłowicz się dograła. Dwa wnioski do komisji etyki', wiadomosci.wp.pl, 26 September 2017, <https://wiadomosci.wp.pl/pawlowicz-sie-doigrala-dwa-wnioski-do-komisji-etyki-6170230767322753a>.

<sup>189</sup> FRA, 'Professionally Speaking: Challenges to Achieving Equality for LGBT People' (FRA, March 2016), 41, <http://fra.europa.eu/en/publication/2016/professional-views-lgbt-equality>.

teaching aids are provided occasionally by NGOs or NGO-trained school professionals.

Multiple studies found inadequacies in the anti-discrimination training available for teachers and other school staff in Poland. The analysis of school curricula conducted in 2011 by TEA indicates that

*. . . the documents concerning the standards for teacher training do not require that teachers be appropriately qualified to conduct anti-discrimination education or combat discrimination in schools. Therefore, anti-discrimination education at school depends solely on the good will and level of awareness of higher education institution authorities and in-service teacher training units, as well as on teachers' willingness to pursue personal development.*<sup>190</sup>

FRA found that, while “[a] substantial number of professionals said they needed training on LGBT issues,” “in some EU Member States, such as Poland, there is evidence that training on the topic of LGBT persons’ fundamental rights would meet resistance.”<sup>191</sup> One teacher from Poland was quoted saying: “I really know nothing about it and I’m not particularly interested, to be honest.”<sup>192</sup> It also found that the “lack of professional capacity in recognising prejudice against LGBT students and tackling it is apparent” in many EU Member States, including Poland.<sup>193</sup>

The former CEO of Trans-Fuzja foundation, Wiktor Dynarski<sup>194</sup> argues that “[institutions] don’t talk about transgender young people in the context of other aspects – safety both at school and in broadly understood peer groups, protection from psychological, physical or sexual violence”.<sup>195</sup>

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<sup>190</sup> Marta Abramowicz (ed), *Wielka Nieobecna – o Edukacji Antydyskryminacyjnej w Systemie Edukacji Formalnej w Polsce Raport z Badań* (TEA 2011) <[http://www.tea.org.pl/userfiles/file/Wielka\\_nieobecna\\_raport.pdf](http://www.tea.org.pl/userfiles/file/Wielka_nieobecna_raport.pdf)> accessed 5 May 2018.

<sup>191</sup> FRA, 44.

<sup>192</sup> FRA, 44.

<sup>193</sup> FRA, 44.

<sup>194</sup> Marta Abramowicz and Małgorzata Jonczy-Adamska, ‘Najważniejsze Wnioski i Rekomendacje’, in *Wielka Nieobecna – o Edukacji Antydyskryminacyjnej w Systemie Edukacji Formalnej w Polsce Raport z Badań*, ed. Marta Abramowicz (Warszawa: TEA, 2011), 293, [http://www.tea.org.pl/userfiles/file/Wielka\\_nieobecna\\_raport.pdf](http://www.tea.org.pl/userfiles/file/Wielka_nieobecna_raport.pdf).

<sup>195</sup> Wiktor Dynarski, ‘Gdy System Nie Ma Nic Do Zaoferowania. Potrzeby Transpłciowej Młodzieży w Polsce i Sprostanie Im’, in *Transpłciowa Młodzież w Polskiej Szkole Raport z Badań*, ed. Wiktor Dynarski, Izabela Jąderek, and Anna M. Kłonkowska (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2016), 29, [http://transfuzja.org/download/publikacje/transpłciowa\\_mlodziuz.pdf](http://transfuzja.org/download/publikacje/transpłciowa_mlodziuz.pdf).

According to the pilot study conducted by the University of Gdańsk among principals of four schools with self-identified transgender students, “[s]chools do not carry out integrated, well-thought-out educational activities aimed at sensitizing students on the issue of transgender students, but instead they shape pro-social attitudes in general”.<sup>196</sup> The study concludes that “the knowledge of school principals and teachers on transgender issues does not surprise with its breadth.”<sup>197</sup>

TEA asked selected regional school superintendents about actions taken to improve staff competences on anti-discrimination (including SOGI, but not sex characteristics), particularly in the context of following up to reported incidents. The actions were divided into four categories, depending on the level of engagement. They include “completing tasks at the minimum level required by law; dissemination of initiatives implemented by other institutions and organizations; independent initiation and implementation of anti-discrimination education activities. A separate category are activities which – according to the descriptions – are not related to counteracting discrimination but are perceived as such.”<sup>198</sup> In one case, the Lower Silesian school superintendent argued that workshops “Find the Right Solution - smoking prevention program,” carried out by the Sanitary and Epidemiological Station, were aimed at countering discrimination.<sup>199</sup> In many cases, institutions argued that general anti-violence activities suffice for countering discrimination and bias-motivated violence. TEA observes that, “[a]lthough this cannot be said with certainty, nevertheless – reading the referenced correspondence, we had a strong conviction that for the authors the issue of aggressive behaviour at school “blends” with discrimination and violence motivated by prejudices”.<sup>200</sup> Only few institutions showed examples of their own initiatives directly related to discrimination, but none of them concerned discrimination based on SOGIESC specifically.<sup>201</sup>

If there is any anti-discrimination training for teachers and other school staff, it is usually conducted by NGOs or NGO-trained in-house trainers. As such, they are usually project-based, and the funding is not sustainable. Similarly, the only available teaching aids concerning discrimination, hate speech and bias-motivated violence are those prepared by civil society groups.

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<sup>196</sup> Roman Grzejszczak, *Transpłciowość a System Oświaty w Polsce. Raport z Badania*, ed. Wiktor Dynarski, Izabela Jąderek, and Anna M. Kłonkowska (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2016), 69, [http://transfuzja.org/download/publikacje/transplciowa\\_mlodziem.pdf](http://transfuzja.org/download/publikacje/transplciowa_mlodziem.pdf).

<sup>197</sup> Grzejszczak, 69.

<sup>198</sup> Chustecka, ‘Reakcje Instytucji Oświatowych Na Dyskryminację w Szkołach’, 191.

<sup>199</sup> *Ibid*, 192.

<sup>200</sup> *Ibid*, 192.

<sup>201</sup> *Ibid*, 193.

**Case: "School without homophobia" training manual**

*Lambda Warsaw published a training manual for trainers working with teachers, educators and other school staff on how to deal with homophobia at school. The manual contains a training curriculum on counteracting homophobia at school and supporting victims. Apart from that, the book provides trainers with basic information about stereotypes, prejudices and discrimination; homophobia and heteronormativity; supporting LGBTI pupils and students and responding to homophobic incidents. It also contains examples of good practices for entire school communities, for teachers and students.<sup>202</sup>*

**Case: Equality Lesson**

*KPH's programme Equality Lesson is dedicated to teachers who, in the interest of their students, want to learn more about the phenomenon of homophobic violence at school. Available resources show how to talk about sexual orientation and gender identity in an open and competent way with students and provide reliable knowledge instead of stereotypes.*

*All resources are available on [LekcjaRownosci.pl](http://LekcjaRownosci.pl)*

## Anti-discrimination Activities for Pupils and Students

According to research by TEA, school communities as whole are rarely offered activities aimed at raising awareness of discrimination and bias-motivated violence. Issues of issues of discrimination and violence based on SOGIESC are never explicitly included in the framework of any existing activities. Instead, general information about safety and prevention of aggression at school is offered.<sup>203</sup>

If there are any anti-discrimination activities for pupils or students, they are usually conducted by NGOs or NGO-trained teachers and other staff (e.g. school psychologists). Access to schools for LGBT NGOs and other equality organizations largely depends on the attitude of the authorities as well as on previous experience in joint organization of such enterprises. There is a good, long-standing cooperation between LGBT and other equality organizations and the Polish Teachers' Union.

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<sup>202</sup> Michał Pawłęga, *Szkoła Bez Homofobii. Podręcznik Trenerski*. (Warszawa: Lambda Warszawa, 2016), <https://drive.google.com/file/d/0B-MOIV58Ues6d0hJOU9aTDFETTQ/view>.

<sup>203</sup> Chustecka, 'Reakcje Instytucji Oświatowych Na Dyskryminację w Szkołach', 201.

In the context of education on LGBTI issues, FRA found that “[t]he impact of local power dynamics (for example, the relationship between local governments, the church, parents and the local media) was seen as forming particular barriers in EU Member States such as Poland.”<sup>204</sup> In Poland, kindergartens, primary and secondary schools are run by local governments, where local politicians lack awareness, are not sensitized and sometimes express homophobic views. For example, in June 2018, a member of the city council in Lublin asked if there are homosexual people among teachers and school management in Lublin during a seating of the city council.<sup>205</sup>

TEA, which analysed the framework for teaching the Polish language in 2011, found that pupils have limited possibility to acquire anti-discriminatory competence with respect to sexual orientation (other grounds were not included in the study). A lot depends on the sensitivity of the teacher, who in many cases selects textbooks and literary texts.

In some cases, anti-discrimination activities conducted at schools, particularly in cooperation with LGBTI and other equality NGOs, are targets of campaigns by right-wing and conservative groups, as well as local and right-wing media.

**Case: Anti-discrimination exhibition in school in Piątkowo<sup>206</sup>**

*The students of a junior high school in Piątkowo (Łódź voivodeship) prepared an exhibition titled "Stop Discrimination!". The posters were devoted to the problems of discrimination, including homophobia (a collage with fragments of the Universal Declaration of Human Rights, photographs of kissing men, figures of famous non-heterosexual persons from the world of politics or show business). After the objection expressed by the members of the local chapter of the right wing National Radical Camp, the head of commune intervened, and the exhibition was removed. Media reported on the persecution of students and teachers who were involved in the anti-discrimination project.*

*The Commissioner for Human Rights, Amnesty International, TEA and the KPH intervened against taking down the exhibition and persecuting its authors. The Łódź region school superintendent was asked about the steps that were taken to protect the children and the teachers from being harassed and to support students and teachers in engaging anti-discrimination activities. The*

<sup>204</sup> FRA, ‘Professionally Speaking: Challenges to Achieving Equality for LGBT People’, 45.

<sup>205</sup> Anna Gmiterek-Zabłocka, ‘Radna PiS tropi gejów wśród nauczycieli i dyrektorów szkół. "Czy wśród nich są osoby homoseksualne?"’, tokfm, 8 June 2018, <http://www.tokfm.pl/Tokfm/7,102433,23501588,radna-pis-z-lublina-czy-wsrod-dyrektorow-szkol-i-nauczycieli.html>.

<sup>206</sup> Chustecka, ‘Reakcje Instytucji Oświatowych Na Dyskryminację w Szkołach’, 175.



superintendent responded that the content of the exhibition was found 'impossible to comprehend' for some students because illustrations were not adjusted to their age.

**Case: Rainbow Friday<sup>207</sup>**

The campaign "Rainbow Friday", organized by the KPH, aims at ensuring safety and well-being of all children. Teachers can apply for promo and educational materials (posters, pins, booklets), but it's up to each school to decide how "Rainbow Friday" will look. 75 schools participated in the first iteration of the project in 2016, with the number growing in following years.

The action met with protests from right-wing politicians and activists. The right-wing think tank Ordo Iuris offered legal support for parents who refuse to allow their children to participate in anti-discrimination activities.

**Case: "Let's protect the children" campaign<sup>208</sup>**

In 2017 the right-wing think tank Ordo Iuris launched the campaign "Let's protect the children" that allows internet users to enable the organizers of the campaign to file a freedom of information request on whether a specific school has cooperated with CSOs that "provide children with content that undermines the social role of the family and the identity of marriage as a union of a man and woman, and sometimes promotes practices conducive to promiscuity."

According to the campaign's report, over 500 reports from parents about anti-discrimination activities in schools were received and a list of CSOs teaching sexual education or conducting anti-discrimination activities at school was drawn up. The organization claims that the campaign led to the removal of the obligation to conduct anti-discrimination activities from the list of tasks of public schools.

**Case: Letters to schools**

20th August 2016, across Poland. Stowarzyszenie Rodzin Wielodzietnych Warszawy i Mazowsza Association addressed 20 thousand schools in Poland with a letter. The letter identified the names of LGBT activists (qualified educators) who have been charged with false allegations that the educational activities they

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<sup>207</sup> Paweł Kościński, 'Dziś "tęczowy piątek" w polskich szkołach. By każdy uczeń czuł się dobrze. Ale posłowie PiS protestują', wyborcza.pl, 28 October 2016, <http://wyborcza.pl/7,75398,20903181,dzis-teczowy-piatek-w-polskich-szkolach-by-kazdy-uczen-czul.html>; Kamil Fejfer, 'Tęczowy Piątek. Prawnik z Ordo Iuris Nie Zna Konstytucji', 29 October 2016, <https://oko.press/teczowy-piatek-prawnik-ordo-iuris-zna-konstytucji/>.

<sup>208</sup> Bernaciak et al., *Chrońmy Dzieci! Podsumowanie Kampanii*.



*undertook were aimed at promoting sexual dysfunction of children and LGBT behaviour, as well as exposing children and young people to identity disorder and increased risk of HIV infection, mental destruction, and demoralization and depravity.*

*Source: Witness, the KPH legal team*

Higher education institutions still give consent to organize under their auspices lectures/presentations of people who openly make hateful comments about LGBTI persons.

#### **Case: Paul Cameron's university appearances**

*Paul Cameron, an American psychologist known for his homophobic views, has been a regular visitor at many universities and other institutions in Poland.*

*In 2012 an LGBT association the Diversity Workshop published an article on their website calling him "a scientific impostor", "a homophobic liar" and saying that he "notoriously falsifies data and fakes research." In 2013 the association sent letters containing objections to the organization of his lectures to universities in Poland. The association supported its publications with the opinions of scientific societies and other researchers questioning the scientific credibility of Paul Cameron. In response to these actions, the psychologist sued the organization. The appeals court in Gdańsk upheld, in principle, the judgment of the court of first instance stating that the organization committed an unlawful violation of Cameron's personal rights, only slightly changing the verdict in favour of the defendant in respect of the sanctions imposed. The court decided that Cameron is a public figure and that 'his views are isolated' and that he should be prepared for criticism of his work, so calling him a 'pseudo-scientist' and saying he does 'pseudo-science' is allowed. However, some criticism of his work was found to be going too far (calling him a 'hochsztapler', which roughly translates to 'impostor' or a 'charlatan'). The court obliged the association to send a letter to university rectors apologizing for the infringement of the good name and scientific reputation of Mr Cameron, as well as to publish an apology on the association's website. The psychologist also demanded payment of 30 thousand PLN for a social purpose. However, the courts dismissed that demand.<sup>209</sup>*

*Cameron had another tour in Poland shortly after the announcement of the court's decision, but none of the engagements was at a university.<sup>210</sup>*

<sup>209</sup> HFPC, 'Paul Cameron Kontra Działacze LGBT. Wyrok Sądu', 31 March 2017, <http://www.hfhr.pl/paul-cameron-kontra-dzialacze-lgbt-wyrok-sadu/>.

<sup>210</sup> Ruch Narodowy, 'Paul Cameron ponownie w Polsce! Spotkania w Warszawie, Lublinie, Białymstoku, Olsztynie, Gdańsku i Bydgoszczy', Ruch Narodowy, 5 May

**Case: Conference “Identity of marriage and its juridical expression”<sup>211</sup>**

*In 2017, the right-wing think tank Ordo Iuris co-organized the conference “Identity of marriage and its juridical expression” at the Department of Law and Administration of the University of Warsaw. The conference programme featured, inter alia, the presentation by American sociologist Mark Regnerus who claims that children of same-sex parents fare worse than children raised by married opposite-sex parents have. His studies have been widely criticized by the academic community and rejected by child welfare practitioners, as well as dubbed “not worthy of serious consideration” by a US federal judge.<sup>212</sup> The conference also featured presentations such as “The violent face of unions simulating marriage,” “Human rights as a means of fight against family and marriage” and “Atrophy of marriage and children’s rights”.*

## Objective Information about SOGIE in School Curricula

Information about sexual orientation is present in the school curriculum. However, it is not provided in an objective and respectful manner. Neither are LGBTI pupils and students provided with necessary information, protection and support to enable them to live in accordance with their sexual orientation. In the opinion of LGBT organizations, the education with respect to LGBTI matters has been damaging and has not contributed in any way to the implementation of the Recommendation.

The school curriculum does contain references to gender identity, yet gender is seen exclusively in the context of femininity or masculinity. In a similar way, sex characteristics are discussed in binary terms, usually in the context of puberty and reproduction. The curriculum does not seem to feature elements educating about transgender and intersex issues in the manner compliant with the current scientific knowledge or human rights standards.

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2017, <http://ruchnarodowy.net/paul-cameron-polsce-spotkania-warszawie-lublinie-bialymstoku-olsztynie-gdansku-bydgoszczy/>.

<sup>211</sup> A.P., ‘Konferencja Naukowa: „Tożsamość Małżeństwa i Jej Jurydyczna Ekspresja” (UW, 29 August 2016), <http://www.wpia.uw.edu.pl/konferencja-naukowa-tozsamosc-malzenstwa-i-jej-jurydyczna-ekspresja/>.

<sup>212</sup> Dale Carpenter, ‘A “Reality Check” for the Regnerus Study on Gay Parenting [UPDATED]’, *Washington Post*, 10 May 2015, sec. The Volokh Conspiracy, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/10/new-criticism-of-regnerus-study-on-parenting-study/>.

Most information about gender, sexuality and sexual health is conveyed during the module “Introduction to the life in the family”. The subject is not obligatory (parents or legal guardians who do not want their child to participate in the classes, inform the school principal accordingly; pupils of age can resign from those classes themselves) and is to be conducted in the amount of 14 hours a year.

The curricula for the module “Introduction to the life in the family” promote “traditional” gender roles and norms.<sup>213</sup> Fragments concerning sexual orientation perpetuate stereotypes and biases, are based on unverified scientific theories and tend to refer to faith and religion. Homosexuality is perceived there as a deviation or affliction and persons with that “problem” should be persuaded to undergo a reparative therapy. The textbooks lack the generally-accepted definitions of homosexuality, bisexuality and heterosexuality. Being LGB is commonly associated with sexually transmitted diseases, paedophilia, sadism and masochism. The content refers also to such phenomena, unknown in the contemporary academic literature, as: “apparent homosexuality” or “homosexual fear”.<sup>214</sup> TEA observes:

*Non-heterosexual readers will not find out from these publications where they can obtain necessary support, e.g. psychological support, what “coming out” means, what their rights are and how they can assert them, also in the school community. Surely, such textbooks will neither encourage them to accept their sexuality nor will induce or reinforce in them the belief that the problem is not their sexual orientation, which is equal to the one statistically more frequent, but biased reactions of the environment. Such textbooks rather encourage LGBT persons to deny their orientation, can reinforce internalized homophobia in them or give a false hope that they can adapt to the heterosexual norm. In that respect, the content of the quoted publications not only does not fulfill the principles of anti-discriminatory education, but at times stands in sharp contradiction to the non-discrimination principle.<sup>215</sup>*

The curriculum of the “Introduction to the life in the family” features the following points related to the issues of human gender identity

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<sup>213</sup> Magdalena Chustecka, ‘Analiza Podręczników i Podstawy Programowej – Przedmiot Wychowanie Do Życia w Rodzinie’ in Marta Abramowicz (ed), *Wielka nieobecna – o edukacji antydyskryminacyjnej w systemie edukacji formalnej w Polsce Raport z badań* (TEA 2011) <[http://www.tea.org.pl/userfiles/file/Wielka\\_nieobecna\\_raport.pdf](http://www.tea.org.pl/userfiles/file/Wielka_nieobecna_raport.pdf)> accessed 5 May 2018.

<sup>214</sup> *ibid* 236.

<sup>215</sup> Chustecka, 249.

include: (1) Formation and acceptance of gender identity. Options of help in overcoming problems related to gender identity and (2) Problems with achieving gender identity, options of help. The latter is not defined, which may result in a substantial potential for interpretation and keep the options open for supporters of reparative therapy (despite the its proven inadequacy), instead of giving an opportunity to advise pupils on possibilities to cope with the so-called gender dysphoria and providing information about gender diversity or correction of gender assigned at birth. Among the points to be discussed there are also “problems in achieving gender identity” – a concept which puts trans children in a worse position of somebody requiring help.

***Case: Homophobic video as a teaching aid in sex education curriculum***

*The video proposed as a teaching aid in the curriculum for sex education features the views of Gerard van den Aardweg, a psychologist who claims he can “cure” homosexuality.<sup>216</sup>*

The „Introduction to the life in the family” also raises concerns in relation to the absence, except for gender identity, of any references to transgender and intersex issues whatsoever. The subject does not mention gender identity and expression, being trans, or variations in sex characteristics (intersexuality).

A recent survey conducted by the sex education group Ponton among young people in Poland (3363 respondents between 11-30 years old) found that 89 per cent of respondents thought that sex education classes are important at school.<sup>217</sup> According to the respondents, LGB issues were not addressed adequately in their sex education. According to the report, homosexuality was presented usually from a heteronormative standpoint, as something negative that can be cured.<sup>218</sup>

## Respect for the Self-determined Name and Gender Marker and Safety of Trans Children

There are no systemic solutions supporting transgender students in their school life. Given the lack of relevant regulations, school authorities attempting to help transgender students are not able to point to suitable legal grounds which would allow to change personal data on a student card. It is possible to change data on the attendance

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<sup>216</sup> Grupa Edukatorów Seksualnych Ponton, 11.

<sup>217</sup> Grupa Edukatorów Seksualnych Ponton, *Sprawdzian (z)Wdź, Czyli Jak Wygląda Edukacja Seksualna w Polskich Szkołach?* (Ponton, 2014), 1, [http://ponton.org.pl/sites/ponton/files/pdf/2014/PONTON\\_raport\\_jaka\\_edukacja\\_2014.pdf](http://ponton.org.pl/sites/ponton/files/pdf/2014/PONTON_raport_jaka_edukacja_2014.pdf).

<sup>218</sup> Grupa Edukatorów Seksualnych Ponton, 11.

list, but most often only if students are supported by their parents.<sup>219</sup> Without parental consent, transgender persons have no possibility to change their personal data in school documents.

A recent pilot study involving four schools where there is at least one transgender student found that

*[t]wo schools did not undertake any educational activities regarding the description and explanation of the social situation of transgender persons. In one of the schools, information activities were carried out in one class, while in another school such activities were undertaken by the women conducting the subject of education for living in a family.<sup>220</sup>*

Only one respondent of the pilot study (a school principal) noted that the school may be an unsafe place for a young transgender person: “Such technical things even as a bathroom, like changing rooms on PE. There is no way for such everyday things as changing clothes, using the toilet. This is very difficult.”<sup>221</sup> Indeed, there is evidence that transgender students experience bullying and harassment at school because of their gender identity or expression (see the statistics above). There is also evidence of school drop-outs of trans children (see the case below).

#### **Case: Transgender girl expelled from school**

*In 2017 media reported the case in which a transgender girl, a student of the high school in Rybnik (Silesian Voivodeship) was forbidden to use the toilet for girls. She was also supposed to practice with the boys on PE. Finally, she was removed from the list of students due to the number of absences and failures at the end of the semester. The given cause of the absences and poor grades was the fact that the girl was harassed by the school management, teachers and peers. Reportedly, the school principal argued that other girls did not want to share the toilet with the transgender girl.<sup>222</sup>*

One school principal from Poland interviewed by FRA said:

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<sup>219</sup> Grzejszczak, *Transpłciowość a System Oświaty w Polsce. Raport z Badania*, 63.

<sup>220</sup> Grzejszczak, *Transpłciowość a System Oświaty w Polsce. Raport z Badania*, 63.

<sup>221</sup> Grzejszczak, 66.

<sup>222</sup> bf, ‘Wyleciała ze szkoły, bo szykanowano ją za transpłciowość? Afera w niedobczyckiej szkole’, 18 May 2017, <https://www.rybnik.com.pl/wiadomosci,wyleciala-ze-szkoly-bo-szykanowano-ja-za-transplciowosc-afere-w-niedobczyckiej-szkole,wia5-3266-33590.html>.

*We had one such person [trans person] in our school. The sex reassignment occurred in the course of that person's education, so he took the final examinations no longer as [female name], but already as [male name], and there were no problems whatsoever with acceptance of this fact by others. [Female name], or rather [male name] was really sweet-natured, everybody liked him/her.<sup>223</sup>*

In the pilot study mentioned above each school approached the issue of adopting the child's preferred name and pronoun. In one case, parents legally changed the child's name to one that could be both male and female.<sup>224</sup> In another case the school changed the name in documentation without consulting parents. This caused issues with the parents and was risky from the point of view of legislation. In a third case, the name in the documents remained unchanged, but the child was addressed verbally using the preferred name and gender by most teachers.<sup>225</sup>

In 2017-2018 two transgender students approached the KPH with a request to help to get their schools to use the students' preferred names and pronouns. Currently, talks are being held with schools to explain and indicate the possibility of changing this practice. The indicated matters, however, reflect well the dominant practice in this area: in general, transgender students are not granted this type of right. Mostly, schools explain that it would be incompatible with applicable law.

## School Policies and Action Plans on Discrimination

Many schools deny the existence of LGBT students. In most schools there are no policies or standards which would ensure equal treatment and safety of LGBTI students. Most schools have some forms of ethics codes, but these do not explicitly mention discrimination and violence motivated by SOGIESC.

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<sup>223</sup> FRA, 'Professionally Speaking: Challenges to Achieving Equality for LGBT People', 40.

<sup>224</sup> Anyone can apply to change their legal name if they have a valid reason, but the name's gender needs to be in accordance with the sex stated in the documents. In some cases, the unofficial, short form of a name can be gender-neutral (e.g. Aleks).

<sup>225</sup> Grzejszczak, *Transpłciowość a System Oświaty w Polsce. Raport z Badania*, 68–69.

In some promising cases, schools and universities have developed standards and policies against discrimination, usually in cooperation with NGOs.<sup>226</sup>

**Case: Teaching aids on anti-discrimination**

*The Foundation for Social Diversity prepared a range of products and programmes aimed at helping teachers and other school staff to deal with discrimination. These include:*

- *Checklist "Equal treatment at school" aimed at helping schools to ensure equal treatment, support integration and counteract stereotypes, prejudices, discrimination and exclusion. Thus, it is to promote the atmosphere of security, respect and openness.*
- *School Code of Equal Treatment - a tool that supports the school staff in pedagogical and educational work, building a culture of dialogue, shaping attitudes based on openness and respect for social diversity, and positively influencing school safety.*
- *Anti-discrimination standard for universities - a document in which the university undertakes to conduct activities to strengthen the principle of equal treatment and to counteract violence and discrimination. The template presents systemic solutions that enable counteracting, diagnosing and reacting to manifestations of violence, unequal treatment and discrimination at universities.*

*All resources are available at  
<https://ffrs.org.pl/biblioteka/broszury/>*

In the research conducted by FRA,

*. . . almost none of the education professionals in Poland knew of any positive policies or initiatives regarding the fundamental rights of LGBT persons in their institutions. Polish public officials reported that some interventions have been put in place at national level but the interviews with education professionals showed that they were not aware of them. The lack of connection between national policymakers and those policy officers and*

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<sup>226</sup> See, e.g. the information on the website of the University of Warsaw at <http://rownowazni.uw.edu.pl/byles-bylas-ofiara-albo-swiadkiem-dyskryminacji/> (accessed 18 June 2018).

*professionals working on the ground is a major problem in the field of education.<sup>227</sup>*

## Recommendations

- 1) Introducing effective training for the teaching staff that would cover issues related to appropriate treatment of students who may be at risk of discrimination based on sexual orientation and gender identity. Training should include: (1) the topic of respect for diversity, equality, human rights and anti-discrimination legislation, (2) the subject of homophobic, biphobic and transphobic discrimination, bullying and sexual harassment, in order to form an appropriate reaction to this type of incidents.
- 2) Ensuring through appropriate provisions in the curriculum that the issue of gender and sexual diversity, described without stereotyping and prejudice, would appear in the curriculum of the subjects such as Biology, History, Civic Education and Polish.

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<sup>227</sup> FRA, 'Professionally Speaking: Challenges to Achieving Equality for LGBT People', 43.



## VII. Health

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*Karolina Więckiewicz & Piotr Godzisz*

- There are no specific measures undertaken to ensure the access to the highest attainable standard of health for LGBTI patients.
- Sexual orientation, gender identity, gender expression and sex characteristics are not covered by anti-discrimination laws regarding access to health services.
- The health of LGBTI people is not included in any equality policies. LGBTI issues are absent from the national health plans, health surveys, suicide prevention programmes, medical training programmes, training courses and materials.
- There is no record of any programmes or services addressed directly to LGB persons.
- There is a dearth of information regarding the overall scale of discrimination against LGBTI people in access to healthcare. Several cases of discrimination in access to healthcare have been registered by NGOs.
- LGB patients can identify their “next of kin” in writing in order for the partner to be able to receive information about their state of health and get access to their medical documentation.
- Homosexuality has been removed from the national classification of diseases. Nevertheless, the treatment aimed at “curing” homosexuality (conversion therapy) is legal and sometimes supported by the government.
- No regulations guarantee effective access to appropriate medical services for transgender persons. Most of medical surveys and diagnostic testing take place in the private sector. There are no standardized requirements of transgender diagnostic testing. No regulations guarantee covering the costs of gender reassignment.
- There are no measures explicitly prohibiting so-called ‘normalizing surgery’ treatments on intersex children. There are no specific rules regarding intersex children that would lead to limitation of unnecessary procedures in early age. Cases have been reported of the so-called normalizing surgery conducted on new-born babies. The government considers this practice as legal.

### Anti-discrimination Laws and National Health Policy towards LGBTI Persons

The health of LGBTI people is not included in any equality legislation or policy documents. There are no specific measures undertaken to ensure the access to the highest attainable standard of health for LGBTI patients.

Despite the fact that the Polish Constitution guarantees (in art. 68) the right to protection of health and equal access to healthcare financed with public funds, the Act on equal treatment (URT) prohibits discrimination in access to health care (public and private alike) only on grounds of race, ethnicity and nationality (art. 7). This means that SOGIESC are not covered by anti-discrimination laws with regard to access to healthcare. The National Program of Actions for Equal Treatment 2013-2016 did not mention health of LGBTI people.<sup>228</sup> The new programme has not been adopted.

In a recent report, the Commissioner for Human Rights (RPO) emphasized the need to change the law and include protection of LGB people (trans and intersex people were not covered) in health care setting as it would allow civil proceedings and compensation in case of discrimination.<sup>229</sup>

The act that regulates access to health services financed from public resources<sup>230</sup> has a non-discrimination provision (on any ground – an open catalogue) applicable to waiting lists and queues. The Ministry of Health failed to provide information on whether this provision was ever used in the case of SOGIESC-based discrimination.<sup>231</sup>

The healthcare system neither perceives nor meets the needs of LGBTI patients. LGBTI issues are absent from the national health plans, health surveys, suicide prevention programmes, medical training programmes, training courses and materials. The National Health Programme adopted in 2016 and covering the years 2016-2020<sup>232</sup> leaves out the issue of LGBTI patients, similarly to previous programmes. The Ministry of Health did not provide any specific information whether any tasks realized within the framework of this programme include actions addressing LGBTI health.<sup>233</sup> There are no programmes or services addressed specifically to LGBTI persons.

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<sup>228</sup> PRdRT, 'Krajowy program działań na rzecz Równego Traktowania na lata 2013-2016 [National equal treatment action plan for 2013-2016]' <<http://www.rownetraktowanie.gov.pl/aktualnosci/krajowy-program-dzialan-na-rzecz-rownego-traktowania-na-lata-2013-2016>> accessed 25 April 2015.

<sup>229</sup> RPO, *Równe Traktowanie Pacjentów – Osoby Nieheteroseksualne w Opiece Zdrowotnej Analiza i Zalecenia* (RPO 2014) <[https://www.rpo.gov.pl/sites/default/files/BIULETYN\\_RZECZNIKA\\_PRAW\\_OBYWATELSKICH\\_2014\\_nr\\_7.pdf](https://www.rpo.gov.pl/sites/default/files/BIULETYN_RZECZNIKA_PRAW_OBYWATELSKICH_2014_nr_7.pdf)> accessed 5 May 2018.

<sup>230</sup> Act on August 27th, 2004 on the health care services financed from the public funds (unified text Journal of Laws 2017, item. 1938 as amended).

<sup>231</sup> Letters from the Minister of Health of April 17<sup>th</sup>, 2018 and June 15<sup>th</sup>, 2018.

<sup>232</sup> Ordinance of the Council of Ministers of 4 August 2016 on the National Health Program for 2016–2020 [*Rozporządzenie Rady Ministrów z dnia 4 sierpnia 2016 r. w sprawie Narodowego Programu Zdrowia na lata 2016–2020*], available for download:

<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20160001492/O/D20161492.pdf>

<sup>233</sup> Meeting with the Ministry of Health, 25 June 2018.

Also reports on public health published annually by public institutions do not refer to health care for LGBTI persons, apart from raising the issue of the increasing rates of HIV infection in the group of men having sex with men.<sup>234</sup> Neither the reports nor audits made by the Patient's Rights Ombudsman indicate that this problem is of interest to this authority.

## Reported Cases of Discrimination

There is a limited number of effective remedies for LGBTI victims of discrimination in the healthcare system.<sup>235</sup> Despite the declaration made by the Patients' Rights Ombudsman about the possibility to report cases of discrimination to his office,<sup>236</sup> the office failed to provide any information on the cases.

In 2014 the Commissioner for Human Rights (RPO) conducted a research on the situation of LGB people in healthcare settings (trans and intersex issues were not included). The report shows that there is a threat of a lower standard of healthcare for LGB people due to bias and stereotypes as well as lack of sufficient knowledge of the doctors.<sup>237</sup>

Considering the reported cases of discrimination on the grounds of SOGIESC in the access to health services, the Ministry of Health and the Patients' Rights Ombudsman failed to provide statistics and referred to the above general non-discrimination provision.<sup>238</sup> The Patient's Rights Ombudsman also emphasized that in case of any discrimination an LGBTI patient can report to the Commissioner's office. However, there was no information provided on how many such cases have been reported, even though there is evidence that some cases have been reported.

### **Case: Homophobic psychiatrist**

*In a 2017 case monitored by the KPH, a patient filed a complaint on a homophobic behaviour of a psychiatrist to the Patient's Rights Ombudsman. The complaint was eventually dismissed.*

<sup>234</sup> GUS, 'Stan Zdrowia Ludności Polski w 2014 R.' <<http://stat.gov.pl/obszary-tematyczne/zdrowie/zdrowie/stan-zdrowia-ludnosci-polski-w-2014-r-,6,6.html>> accessed 5 May 2018; PZH, 'Sytuacja Zdrowotna Ludności Polski 2016' <<http://www.pzh.gov.pl/stan-zdrowia-ludnosci/sytuacja-zdrowotna-ludnosci-w-polsce/>> accessed 5 May 2018.

<sup>235</sup> RPO, *Równe Traktowanie Pacjentów – Osoby Nieheteroseksualne w Opiece Zdrowotnej Analiza i Zalecenia* (n 229).

<sup>236</sup> Letter from the Office of the Commissioner for Patient's Rights from April 26<sup>th</sup>, 2018.

<sup>237</sup> RPO, *Równe Traktowanie Pacjentów – Osoby Nieheteroseksualne w Opiece Zdrowotnej Analiza i Zalecenia* (n 229).

<sup>238</sup> Letter from the Minister of Health of April 17<sup>th</sup>, 2018 and June 15<sup>th</sup>, 2018; Letter from the Office of the Patient's Rights Ombudsman from April 26<sup>th</sup>, 2018.

LGBTI patients may have limited access to some health services, including those specific to the needs of trans or intersex patients.

**Case: Access to gynaecologists for trans men**

*The Trans-Fuzja foundation reported several cases of trans men who after completion of legal gender reassignment process and receiving new documents experienced problems with registering for services with a gynaecologist.*

**Case: Access to medicines by trans patients**

*The Trans-Fuzja foundation recorded several cases of refusal to sell prescription medicines to trans persons undergoing gender correction procedure in relation to the personal identification number (PESEL) provided on the prescription. In one of such cases a transgender woman was refused to be sold female hormone drugs due to having a male PESEL number. Another case concerned a refusal to sell a prescribed medicine recommended for gynaecological problems to a transgender man after the legal gender reassignment. The pharmacy employee justified her refusal with a male PESEL number on the prescription and the customer's gender expression.*

## Training of Health Professionals

Medical training programmes, training courses and materials rarely mention LGBTI issues and they do not ensure the required level of awareness among health professionals. When asked about training of health professionals, the Ministry of Health<sup>239</sup> claims that it is impossible to track all the programmes to see whether any content regarding SOGIESC and LGBTI patients is presented at a particular training event. The Patient's Rights Ombudsman indicated that this issue does not fall in the scope of the office's competence and did not provide with any specific information.<sup>240</sup>

There are few specific training programmes for health professionals which provide them with skills and knowledge of LGBTI issues. The only activities in this area are conducted by NGOs, which means they are project-based and unsustainable.

**Case: Brochures for health professionals on LGBTI issues**

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<sup>239</sup> Meeting with the Ministry of Health, 26 June 2018.

<sup>240</sup> Letter from the Office of the Commissioner for Patient's Rights from April 26<sup>th</sup>, 2018.

The KPH issued two publications for doctors and other medical professionals on LGBTI issues: *LGBT health. A guide for medical staff*<sup>241</sup> and *Practical guide on health of LGBTI people*.<sup>242</sup>

#### **Case: Webinars for health professionals**

In 2017 the KPH organized a cycle of webinars for health professionals in which basic information about LGBTI issues was shared: communication with patient, intersex patients, trans patients, LGBT patients' rights and mental health.<sup>243</sup>

#### **Case: Brochure for LGBTI patients**

The KPH published a brochure *Know your rights. Rights of LGBTI patients. The publication was a part of the campaign promoting the rights of a patients among LGBTI people and encouraging LGBTI people to report discrimination. The campaign was conducted under the official patronage of the Patient's Rights Ombudsman and the Commissioner for Human Rights.*

## The Right to Identify Partners of Patients as Their “Next of Kin”

A patient can freely identify their “next of kin”. Also the Ministry of Health confirmed <sup>244</sup> that same-sex partners can execute rights arising from this status. In practice this means that the patient's partner can receive information about their state of health and get access to their medical documentation. The only requirement is that the patient must sign a written statement authorizing their partner as a “next of kin”. When the same-sex partner has such statements, the medial institutions generally respect their rights as “next of kin”. However, if such authorization is missing, if a patient is unconscious, most often their partner will be deprived of this status. This situation is also possible due to the fact that there is no central register of “next of kin” persons, and a “next of kin” status has to be confirmed individually, whenever the patient is using different medical facilities.

<sup>241</sup> Małgorzata Abramowska and others, *Zdrowie LGBT Przewodnik Dla Kadry Medycznej* (Robert Kowalczyk, Marcin Rodzinka and Marek Krzystanek eds, Franciszka Sady tr, KPH 2016) <[https://kph.org.pl/wp-content/uploads/2016/04/Zdrowie-LGBT-\\_Przewodnik-dla-kadry-medycznej.pdf](https://kph.org.pl/wp-content/uploads/2016/04/Zdrowie-LGBT-_Przewodnik-dla-kadry-medycznej.pdf)> accessed 5 May 2018.

<sup>242</sup> Marcin Rodzinka, *Praktyczny Przewodnik Po Zdrowiu LGBTI Dla Lekarzy* (2nd edn, KPH 2017) <<https://kph.org.pl/wp-content/uploads/2017/11/Praktyczny-przewodnik-po-zdrowiu-LGBTI-dla-lekarzy.pdf>> accessed 5 May 2018.

<sup>243</sup> <https://kph.org.pl/cykl-webinarow-akademia-zdrowia-lgbti/>

<sup>244</sup> <https://kph.org.pl/ministerstwo-zdrowia-uznaje-pary-jednoplciowe/>

## Conversion Therapy

While homosexuality is not officially considered to be a disease or health disorder in Poland (the national classification of diseases follows ICD-10), conversion therapy, i.e. the treatment aimed at changing sexual orientation from homosexuality or bisexuality to heterosexuality is legal and practiced in Poland. Many health professionals, including psychotherapists and psychiatrists contracted by the National Health Fund, continue to believe that homosexuality is a disease and attempt to “treat” it, sometimes against the patient’s will. Lack of legal provisions and monitoring of the profession rises a risk of such malpractice.

From the KPH and Lambda Warsaw’s experience, there are situations where LGB people referred to a psychotherapist because of depression or other mental health problem were subjected to conversion therapy from the moment the psychotherapist learned the client was not heterosexual, even without the client’s explicit permission.

The KPH and Lambda Warsaw clients of legal and psychological aid (including minors) repeatedly reported cases of attempts to convince (by their parents) them to undergo psychological treatment aimed at "changing" their sexual orientation.

### **Case: Forced conversion therapy**

*04 August 2016, Łowicz. The incident was reported by the partner of the victim. The parents of the victim learned about the sexual orientation of their daughter and rejected her, refused to let her collect her belongings from home, and then tried to get her fired from work so they could take her to reparative therapy. They called the boss of the daughter, pressing them to fire her due to her sexual orientation. She was harassed by phone calls, she was forced to give up the car she was a co-owner, the car was sold and the victim was not given the equivalent. She reported to the Police but was not taken seriously. At present, parents do not maintain any contact with their daughter.*

*Source: Witness, the KPH legal team*

### **Case: Conversion therapy**

*In 2018 there was a case of a psychologist who claimed on her website that her special achievement is a self-elaborated method of conversion therapy. When the case was revealed, NGOs published several statements.<sup>245</sup> There was no reaction from the*

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<sup>245</sup> The whole statement, prepared by the Open Space foundation is available at: <https://www.facebook.com/OtwartaPrzestrzenCT/posts/1980592498860616>

*Ministry of Health or any public institution. The website still exists with the same content.*

NGOs are not aware of any measures taken by the authorities to prevent such actions. Conversely, there is evidence that such practices are supported by the government.

**Case: government award for a conversion therapy centre**

*In March 2017 the Polish prime minister Beata Szydło awarded the “Truth-Cross-Liberation” award to the “Courage” group from Lublin for “spiritual and therapeutic help people with unwanted sexual tendencies and their families”.*

**Case: Polish Sexologist Association**

*The Polish Sexologist Association issued a statement in 2016 in which this institution declared: “Promotion of therapy that aims and correcting, converting or repairing homo or bisexual orientation in the direction of solely heterosexual is not in accordance with current knowledge about human sexuality and can result in serious dangerous psychological effects for people undergoing such therapy”.<sup>246</sup>*

**Case: Apologies for using conversion therapy in the past**

*In 2015 a well-known Polish sexologist, Zbigniew Lew-Starowicz, apologized for the fact that in his past he used to believe that homosexuality can be treated and was engaged in practices to do so.<sup>247</sup> The apologies were directed at those he treated and to the whole community.*

**Case: European Parliament’s report**

*In March 2018 the European Parliament adopted a report on implementation of the fundamental rights in the European Union which stated that conversion therapy needs to be banned. 25 Polish MEPs voted against that report because of this recommendation.<sup>248</sup>*

**Case: “Christian medicine” programme at a public university**

*In 2018, the Wyszynski University in Warsaw, a public institution affiliated with the Catholic Church, announced that it would open a medicine study programme. According to the announcement, the*

<sup>246</sup> <http://pts-seksuologia.pl/sites/strona/59/stanowiskopts-na-temat-zdrowia-osob-o-orientacji-homoseksualnej>

<sup>247</sup> <http://wyborcza.pl/1,75398,18441165,prof-lew-starowicz-przeprasza-gejow-za-leczenie-elektrowstrzasami.html>

<sup>248</sup> <https://kph.org.pl/parlament-europejski-wzywa-do-zaprzestania-terapii-konwersyjnych/>



curriculum would “respect Christian values”. The opening of the programme was supported by the Polish president Andrzej Duda and the minister of science and higher education Jarosław Gowin. Duda said: “It is also my personal joy that future doctors will be educated at the university based on the Christian foundation”. Gowin said: “Alumni of the Cardinal Stefan Wyszyński University will (...) have a clear [moral] spine and value system, which is especially important in this profession - the mystery of life and death.”<sup>249</sup>

**Case: Committee on the Rights of People with Disabilities’ enquiry about conversion therapy**

The list of issues sent to the Polish government in 2018 by the UN Committee on the Rights of People with Disabilities as part of the monitoring of the implementation of the Convention on the Rights of People with Disabilities, included a question about conversion therapy and the measures to eliminate this practice.<sup>250</sup> As a result, the Polish government will need to examine the situation and explain its position on the subject.

## Gender Reassignment

There are no regulations guaranteeing effective access to appropriate medical services for transgender persons. There are few specialists contracted by the National Health Fund who can admit patients for free. Most of medical surveys and diagnostic testing take place in the private sector, which means that patients need to pay for them. This is a barrier for some trans people. Information about medical specialists is distributed via channels created by transgender persons for transgender persons. There are no public lists of medical centres specializing in gender reassignment.

There are no standardized requirements of transgender diagnostic testing. Trans individuals wishing to have their gender reassigned consult a sexologist who, in most cases, becomes the doctor supervising the gender reassignment process. The medical documentation (necessary for the purposes of the legal gender reassignment procedure) includes the notes taken during the psychological interview, psychiatric opinion and various types of physiological tests (most often head X-ray, cerotype 139 determination and assessment of gonads condition). Such an approach to gender reassignment places trans identities as a kind of a disorder - a phenomenon which can be diagnosed. Sexological diagnosis is made on the ground of psychological one and has the status of a psychiatric diagnosis. There are not enough specialists who can run proper diagnosis for transgender people and who are available

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<sup>249</sup> UKSW, ‘Prezydent RP Wspiera Wydział Medyczny’ (13 July 2018) <<https://uksw.edu.pl/pl/uniwersytet/uczelnia-dzis/aktualnosci/1451-prezydent-rp-wspiera-wydzial-medyczny>> accessed 30 July 2018.

<sup>250</sup> <https://kph.org.pl/onz-upomina-polske-w-sprawie-leczenia-gejow-i-lesbijek/>



within the public health care system. That is why the majority of such services are provided in the private sector.

Hormonal therapy is usually prescribed and monitored by a sexologist. Only some people have the possibility to be supervised by an endocrinologist and that is usually due to the fact that they have other hormonal health issues.

To change the documents and the indication of gender in the court one has to undergo medical procedures - diagnosis, hormonal therapy and sometimes mastectomy. There was a chance to change that into a procedure with no medical requirements. The law was adopted by the previous parliament in 2015 but it was vetoed by the president.<sup>251</sup> There is no political will to facilitate the gender recognition process during this term of the parliament.

The Polish State does not support transgender persons in their efforts to have their gender reassigned. In theory, there is a possibility of individual procedure of calculating and reimbursement of costs of medical treatment related to gender reassignment.<sup>252</sup> In practice, the cost of treatment, particularly surgical procedures, is usually covered by patients. We are not aware of any successful individual proceedings that led to the reimbursement of the costs of gender reassignment procedures by the National Health Fund.

### So-called ‘normalizing surgery’ treatment

There are no measures explicitly prohibiting so-called ‘normalizing surgery’ treatments on intersex children. The general provisions regarding state that a person up to 16 years of age cannot make any valid decision regarding their health. In fact it is possible to perform any medical services without their consent as the parents or guardians have the right to decide. After a person turns 16 and before they turn 18 a consent of both the person in question and their parent or guardian is needed. In the situation of a conflict a court is to decide.

There are no specific rules regarding intersex children that would lead to limitation of unnecessary procedures in early age. Art. 156(1) of the Criminal Code prohibits, under the penalty of imprisonment from 1 year to 10 years, sterilization, which applies also to the reassignment of birth gender as such.

#### **Case: “Normalizing” surgeries**

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<sup>251</sup> TGEU, ‘TGEU Statement: Polish President Duda Vetoes Polish Gender Accordance Act’ (2 October 2015) <<https://tgeu.org/tgeu-statement-polish-president-duda-vetoes-polish-gender-accordance-act/>> accessed 2 July 2018.

<sup>252</sup> Letter from the Minister of Health of April 17<sup>th</sup>, 2018 and June 15<sup>th</sup>, 2018;

The Trans-Fuzja foundation received reports of the so-called “normalizing surgery” conducted on new-born babies.

Both the Patient’s Rights Ombudsman and the Ministry of Health in their letters refer to general provisions of the patient’s consent and do not indicate any special measures regarding the issue of such practices. In the view presented by both institutions, as long as there is a consent of parents / guardians or a court (when this consent cannot be reached), these procedures are lawful.<sup>253</sup>

## Recommendations

- 1) Taking into account the specific needs of health care resulting from sexual orientation and gender identity in:
  - a. national health strategies,
  - b. public health research,
  - c. suicide prevention programs,
  - d. curricula of future doctors,
  - e. courses and training,
  - f. mechanisms for monitoring and controlling the quality of medical services.
- 2) Granting transgender persons free access to the medical services associated with gender reassignment treatment.
- 3) Closing any facilities and centres offering a conversion therapy as a legitimate therapeutic method for transgender individuals, homosexuals or bisexuals.
- 4) Placing a complete ban on surgical intervention in intersex children's bodies in the so-called body-normalization.

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<sup>253</sup> Letter from the Minister of Health of April 17<sup>th</sup>, 2018 and June 15<sup>th</sup>, 2018; Letter from the Office of the Commissioner for Patient’s Rights from April 26<sup>th</sup>, 2018.

## VIII. Housing

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*Karolina Gierdal*

- There is no legislation that explicitly prohibits discrimination based on sexual orientation or gender identity regarding access to adequate housing.
- Public housing services are in range of communes' own tasks. Each municipality has to adopt resolutions regarding, inter alia, the criteria for selecting tenants. There are no known resolutions in which the criteria would directly refer to sexual orientation or gender identity.
- There are no known cases of direct discrimination against LGBT persons in access to community or social housing.
- Families of deceased tenant are protected under Civil Code. In case of tenant's death, persons in close relationship to tenant, inter alia a person who was remaining with tenant in de facto same-sex cohabitation, can become the part of the lease contract.
- The right to ownership of land and other property is not restricted based on sexual orientation or gender identity.
- LGBT persons are not protected in any special way with regards to evictions.
- There are no provisions that would specifically forbid discrimination in providing social services in the area of homelessness. However, there are also no provisions that would enable social services to refuse any service on the grounds of sexual orientation or gender identity.
- There are no state or municipality programmes that would be targeted at LGBT persons with regards to the risk of their homelessness. So far the problem of homelessness of LGBT persons has not been recognized, however there is a systemic problem in Poland regarding prevention of homelessness.

### Access to Adequate Housing

There is no legislation that explicitly prohibits discrimination based on sexual orientation or gender identity regarding access to adequate housing. According to art. 6 of the Equal Treatment Act it is forbidden to discriminate in access and conditions for use social security and social services, including housing services, only on the grounds of gender, race, ethnicity and nationality, provided these services are offered publicly.<sup>254</sup>

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<sup>254</sup> Act of 3 December of 2010 on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment [Pol.: Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania] (Journal of Laws No 254, item 1700).

Public housing services are in range of communes' own tasks. The municipalities are responsible for community housing stock management. In Poland social and commune housing are usually provided to low-income tenants. Each municipality has to adopt resolutions regarding, inter alia, the criteria for selecting tenants.

**Case: criteria used while providing public housing services in Warsaw**

*In Warsaw there are two criteria for selecting tenants. The first one is connected with homelessness or difficult housing conditions. The second is connected with family income, which cannot be higher than stated in the resolution. Some groups can have a higher income, inter alia people with disabilities, families with 4 children or more, children's home pupils. There are also groups that don't have to meet the first criteria, inter alia tenants from privatized buildings. LGBTI persons are not among groups that are treated favorably<sup>255</sup>.*

Family of the deceased tenant is protected under art. 691 of the Civil Code. The law states that in case of tenant's death, persons in close relationship to tenant, inter alia a person who was remaining with tenant in de facto cohabitation, becomes the part of the lease contract by law.

**Case: the right of the same-sex partner to become a part of a lease contract in the place of his deceased partner**

*Mr. A.K. filed a lawsuit demanding the court to declare that he became the part of a lease contract in the place of his late partner, with whom he lived for the last 9 years in actual cohabitation. The District Court dismissed the lawsuit stating that art. 691 KC does not apply to same-sex partnerships. After his appeal, the Regional Court decided to submit the legal issue which raised serious doubts, to the Supreme Court. In 2012 the Supreme Court issued a resolution supporting the view that a person remaining in cohabitation with the tenant is a person connected with tenant by emotional, physical and economic bond, regardless of their sex<sup>256</sup>.*

There are no known cases of direct discrimination against LGBT persons in access to community or social housing.

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<http://www.zgn.waw.pl/upload/Lokale%20mieszkalne/uchwalaNrLVIII17512009%20zmieniona.pdf>

<sup>256</sup> Supreme Court resolution of 28.11.2012, case file no. III CZP 65/12

## Access to Ownership of Land and Other Property

The right to ownership of land and other property is not restricted based on sexual orientation or gender identity. Polish law also enables everyone to be co-borrowers, co-owners or co-tenants of property. This means that partners in same-sex relationships, treated as strangers by law, are also entitled to joint purchase, sale of land and other properties and are also able to take a joint loan.

This however does not fully apply when one of the partners does not have Polish citizenship. Foreigner, who is not a citizen of countries that belong to European Economic Area and Switzerland, must obtain a permit from the Minister of Internal Affairs. The permit is issued if the foreigner establishes his/her connections with Poland, which can be done, inter alia, by proving he/her is married to a Polish citizen. The permit is not necessary in cases where, inter alia, the foreigner will prove he/her is married to a Polish citizen for at least 2 years since being granted the residence permit. Since Poland does not recognize same-sex marriages, the same-sex spouses of Polish citizens are treated as strangers to them and are not able to use these provisions.

### **Case: Polish-Chilean same-sex couple who wanted to purchase jointly a real estate in Poland**

*A Chilean citizen who is in a same-sex relationship with a Polish citizen applied to the Minister of the Interior for a permit to purchase (together with his partner) a real estate in Poland. The Minister of Interior issued a negative decision, considering that the homosexual partner did not show that he had any connections with Poland, which is a necessary condition for obtaining a permit to purchase a real estate. Subsequently, the Voivodship Administrative Court in Warsaw<sup>257</sup> dismissed the complaint of the Chilean partner of the Pole to the decision of the Minister of the Interior. In its judgement the court pointed out that the authority, in issuing the decision, properly recognized that the homosexual partner did not present circumstances confirming the relationship of the foreigner with Poland, which is a necessary condition for obtaining a permit to purchase real estate. The applicant lodged a cassation complaint against the above judgment. The Supreme Administrative Court overruled the judgement of the court of first instance and decisions refusing to grant such permission to a Chilean citizen. The court ruled that same-sex partnerships, like marriages, could also be a circumstance confirming the existence of ties with Poland, which would allow to grant permit for the acquisition of real estate by a foreigner. The court also stressed that the catalogue of circumstances that may confirm the existence of ties with Poland is open, and this fact may be confirmed not only by*

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<sup>257</sup> The Voivodship Administrative Court in Warsaw judgment of 29<sup>th</sup> January 2014, case file no. WSA IV SA/Wa 2457/13

*marriage, but also by an informal relationship, including heterosexual and homosexual.*<sup>258</sup>

In the previous report from 2012 the issue of difficulties with obtaining a loan for LGBT couples was raised. Since then LGBT NGO have not received any signals indicating that there are still problems with discriminatory conduct of finance institutions regarding their services.

## Evictions and Homelessness

Polish legislation enables an owner to evict a person that is residing on owner's property without a legal ground (e.g. a lease contract). The owner must file a lawsuit to the district court to obtain such order which, afterwards, is executed by a court executive officer. The court must also establish whether the defendant is entitled to social housing. The court must grant this right for some groups, inter alia pregnant women, underage children, people with disabilities, unemployed. LGBT persons are not protected in any special way. Evictions on so-called "streets" without the right to social housing, are fairly common<sup>259</sup>. The court executive officer can evict a person to a temporary room if the municipality provides one. If not, he has to wait for 6 months and afterwards can evict a person to a night shelter or other temporary hostel for homeless-person (art. 1046 par. 4 of the Civil Procedure Code).

The evicted person can try to obtain a commune or social housing. However, the permanent lack of municipality housing stock means that even if an evicted person meets the criteria, he or she can wait for years before being provided with a place to stay<sup>260</sup>.

There are groups of tenants who are not protected from evictions "on the street", i.e. the court is not obliged to establish whether they are entitled to social housing. That refers to tenants who signed the so-called "occasional lease" contracts (with private owners) and "institutional lease" contracts (under the special state housing programme "Apartment Plus" adopted in July 2017).<sup>261</sup>

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<sup>258</sup> The Supreme Administrative Court judgment of 14<sup>th</sup> September 2016, case file no. NSA II OSK 2982/14

<sup>259</sup> There are no statistics on the prevalence of orders of evictions with and without right to social housing. However, there are statistics of court executive officer's activities. Each year about 25 – 33% cases of evictions registered by the court officers are the ones without the right to social housing - <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,6.html>

<sup>260</sup> RPO, 'Informacja o stanie przestrzegania wolności i praw człowieka i obywatela w 2017 oraz o działalności Rzecznika Praw Obywatelskich [The report on the activity of the Commissioner for Human Rights and on the status of the observance of human and civil rights and freedoms in 2017]', p. 580

<sup>261</sup> op. cit., p. 579. Act on the Protection of Tenants Rights, Municipal Housing Stock and the Civil Code Amendment Act of 21 June 2001 [Pol.: Ustawa o

There are no provisions that would specifically forbid discrimination in providing social services in the area of homelessness. However, there are also no provisions that would enable social services to refuse any service on the grounds of sexual orientation or gender identity. LGBT persons are supposed to be treated equally, regardless of these features.

There are no state or municipality programmes that would be targeted at LGBT persons with regards to the risk of their homelessness. The information held by non-governmental organizations shows that so far the problem of homelessness of LGBT persons has not been recognized. State does not identify such a category of the homeless persons or threatened with homelessness, which reflects a complete lack of any actions or recommendations aimed at combating this phenomenon.<sup>262</sup>

Also, between 2013 and 2018 no organization focused on providing help specifically to LGBT persons at risk of homelessness was granted financing from the Ministry of Justice funds.<sup>263</sup>

#### **Case: LGBT emergency hostel**

*In February 2015 Lambda Warsaw in cooperation with the Trans-Fuzja foundation opened first intervention hostel for LGBT persons in Poland. It was located in a discreet place in Warsaw and was providing services for people who were forced to leave their current*

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ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu Cywilnego] unified text of 7 February 2005 (Journal of Laws No 31, item 266 as amended).

<sup>262</sup> It must be noted that the problem of homelessness seems to be a systematic one in Poland. Specialists in the field point especially to inadequate prevention programmes, definition of homelessness open to interpretation and as a consequence – arbitrary decisions from the officials, lack of forms of assistance other than providing temporary place in night shelters or hostels, many inadequate requirements that a person must meet in order to qualify for social housing, dependence on social services provided in institutions focused on homeless persons, lack of social/communal housing – see: 'Programy mieszkaniowe w przeciwdziałaniu bezdomności – dobre praktyki i refleksja systemowa [Housing programmes in combating and prevention of homelessness – good practices and systematic reflection]' – Jakub Wilczek [ed.], (RPO, Warsaw 2017)

<sup>263</sup> Since 2015 many NGOs that relied on financing from Victim Relief Fund in their activities, did not receive any financing. It applies especially to NGOs focused on helping women experiencing domestic violence. Their offers were not accepted based on the fact that they are providing help only to women which was perceived by the authorities as discriminatory towards men. At the same time the funds were granted almost exclusively to Christian or catholic organizations (Ignacy Dudkiewicz, 'Konkurs widmo, ale pieniądze realne [ngo.pl, 24 November 2017], <http://wiadomosci.ngo.pl/wiadomosc/2137397.html>, accessed 28 July 2018). The activities of Ministry of Justice regarding the Fund were also criticized by NIK because of mismanagement, lack of data, general lack of success in providing help to victims of crimes (see more: <https://www.nik.gov.pl/aktualnosci/fundusz-pomocy-pokrzywdzonym.html>, accessed 28 July 2018).

*place of stay due to their sexual orientation or gender identity. Apart from providing temporary housing, the hostel was also providing help with personal problems and preparing tenants to independent living. The hostel offered accommodation, food, psychological support and social worker assistance. The first year of the hostel's activity was financed from the programme "Citizens for Democracy" from EOG Funds. Since March 2016 the hostel was operating thanks to funds granted by international organization All Out and financing from private donors.<sup>264</sup> It was closed in mid-October 2016 due to lack of funds.<sup>265</sup>*

## Recommendations

- 4) Establishing (for instance as a joint enterprise of local authorities and LGBT NGOs) stationary shelter providing services (accommodation, food, psychological support and social worker assistance) for people who were forced to leave their current place of stay due to their sexual orientation or gender identity.
- 5) Creating the support programs that would meet the specific risk of homelessness among people at risk of discrimination based on sexual orientation and gender identity, especially young people and children.
- 6) Including issues of sexual orientation and gender identity in the training of future social workers, particularly in relation to LGBT persons at risk of discrimination in the context of the family.

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<sup>264</sup> See more: <http://lambdawarszawa.org/lambdawarszawa/co-robimy/program-bezpieczenstwo/hostel-lgbt/>

<sup>265</sup> Karolina Pietrzak, 'Hostel interwencyjny dla osób LGBT wstrzymuje działalność. "Brakuje środków"' ([wawalove.wp.pl](https://wawalove.wp.pl/hostel-interwencyjny-dla-osob-lgbt-wstrzymuje-dzialalnosc-brakuje-srodkow-6178754414909569a), 6 October 2016) <https://wawalove.wp.pl/hostel-interwencyjny-dla-osob-lgbt-wstrzymuje-dzialalnosc-brakuje-srodkow-6178754414909569a>, accessed 28 July 2018





## IX. Sports

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*Karolina Więckiewicz & Piotr Godzisz*

- There is evidence of homophobia in sports in Poland. This is particularly visible in football but is not limited to this sports discipline.
- There are no specific measures adopted to prevent, fight and prosecute discriminatory abuse referring to sexual orientation or gender identity during and in relation to sporting events in Poland.
- The 2015 government action plan “Sport Development Programme until 2020” proposes some actions against homophobia in sports, but these are not being implemented. The state authorities do not engage in raising awareness of LGBT issues in sports in any way.
- Elected officials often fail to condemn manifestations of homophobia in sports.
- Some well-known athletes engage in pro-LGBT campaigns.
- Few professional athletes are officially out.
- There are some independent grass-roots sports initiatives which are inclusive for LGBT people.

### LGBTI-phobia in Mainstream Sports

Homophobia and other forms of discrimination and intolerance are rampant in men’s football in Poland, both among players and fans. Homophobic and discriminatory language, particularly the words “pedał” (“faggot”) and “żyd” (Jew), is often used in the context of cheering or when speaking of opposing team. According to one sports journalist, a “faggot” is the most offensive word for a footballer.<sup>266</sup> Homophobic language is also used during training by coaches. Expressions of sexual and gender diversity are shunned.<sup>267</sup>

#### **Case: Male footballer with makeup**

<sup>266</sup> Przemysław Rudzki, quoted in Renata Kim and Anna Szulc, ‘Gej w szatni przeraża piłkarza’ (*Newsweek.pl*, 12 September 2013) <<http://www.newsweek.pl/polska/gej-w-szatni-przeraza-pilkarza,107843,1,1.html>> accessed 17 July 2018.

<sup>267</sup> *ibid*; Piotr Wesołowicz, ‘Piłkarze homoseksualiści: smutna zabawa w chowanego’ (11 October 2017) <<http://www.rp.pl/Pilka-nozna/310169931-Pilkarze-homoseksualisci-smutna-zabawa-w-chowanego.html>> accessed 19 July 2018; Paweł Mączewski, ‘Bycie gejem-kibicem nie jest łatwe’ (*Vice*, 17 August 2016) <<https://www.vice.com/pl/article/mv8gev/gej-legionista-milosc-do-klubu-ponad-wszystko>> accessed 19 July 2018; Ewa Siedlecka, ‘Kara za “zakaz pedałowania”’ (*wyborcza.pl*, 16 October 2013) <[http://wyborcza.pl/1,134154,14792364,Kara\\_za\\_\\_zakaz\\_pedalowania\\_.html](http://wyborcza.pl/1,134154,14792364,Kara_za__zakaz_pedalowania_.html)> accessed 19 July 2018.

*In July 2018, a picture of a male professional footballer wearing makeup was posted on social media by his girlfriend. The picture met with various reactions, including negative ones. The tabloid Super Express and the editor of the football-focused website weszlo.com commented that the athlete “does not know how to use social media”.<sup>268</sup>*

In other disciplines of sports LGBTI-phobia seems to be less visible, although it also exists.

**Case: ‘Ban the faggots’ sign at a basketball game**

*In October 2013, fans of the Śląsk Wrocław basketball club displayed the sign ‘ban the faggots’ in the club colours of the opponent team, Anwil Włocławek. The league management reacted promptly. The league’s spokesperson said that the league “makes sure that the fans feel safe at the matches and can experience sport emotions in a friendly atmosphere.” He condemned the sign and said that a financial penalty would be imposed on the club.<sup>269</sup>*

**Case: hyperandrogenous athlete**

*In 2016, the South-African middle-distance runner Caster Semenya, who is hyperandrogenous and is believed to be intersex, won the Olympic gold medal. Polish media reporting on Semenya’s victory used inappropriate terms, such as “babochłop” (“man-woman” or “tomboy”) and the internet was full of interphobic and transphobic comments. The Polish runner Joanna Józwik, who came fifth (losing to Caster Semenya, Francine Niyonsaba and Margaret Wambui), said: “I will inject myself with some testosterone and I will run like that, too.” She also emphasized that she “felt like she was second.”<sup>270</sup> She later clarified that “Semenya, Niyonsaba and Wambui participated in the Olympic Games in accordance with the rules and rules in force and in accordance with them they won the Olympic medals”, but that the rules “raise controversy and should be reviewed”.<sup>271</sup>*

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<sup>268</sup> queer.pl, ‘Czy piłkarz może się... malować?’ <<https://queer.pl/news/201569/czy-pilkarz-moze-sie-malowac>> accessed 19 July 2018; MF, ‘Piłkarz Wisły Kraków Wygląda Jak Kobieta. Co on Zrobił Ze Swoją Twarzą?! [ZDJĘCIE]’ (17 July 2018) <<https://sport.se.pl/pilka-nozna/ekstraklasa/pilkarz-bialej-gwiazdy-dal-sie-pomalowac-panienka-z-wisly-krakow-aa-CesE-Qboq-bLdq.html>> accessed 19 July 2018.

<sup>269</sup> Siedlecka (n 267).

<sup>270</sup> queer.pl, ‘Sport i gender: biegacz czy biegaczka?’ (23 August 2016) <<https://queer.pl/artykul/197933/sport-i-gender-biegacz-czy-biegaczka>> accessed 19 July 2018.

<sup>271</sup> Joanna Józwik (Facebook, 23 August 2016) <<https://www.facebook.com/joannajozwik800/posts/1041866832593189>> accessed 19 July 2018.

There are no studies regarding attitudes towards sexual or gender diversity among professional athletes. Available anecdotal evidence suggests that the majority view is negative. Many professional footballers asked by the website *weszlo.com* about “a gay man in the locker room” respond “No way”, “I don’t accept it” or similarly. Many interviewees also admit that it would be a problem for a footballer to come out as gay.<sup>272</sup>

Homophobic views shared across the board by fans and athletes result in practically no coming outs of mainstream professional athletes (particularly men). In the survey conducted by the LGBT website *innastrona.pl* (currently *queer.pl*), 60% of participants said that coming out of a well-known athlete would possibly help combat homophobia in sports, but would also ruin their career (33% thought that it would help combat homophobia, while 6% considered that it will not change anything).<sup>273</sup>

**Case: Professional female basketball player comes out as lesbian**

*Sharnee Zoll-Norman is a star of the Śląza Wrocław female basketball club. In 2017 she was the best assisting player in the women’s basketball league and was chosen the most valuable player of the regular season (MVP) by league coaches.*

*Zoll-Norman is African-American and lives in Wrocław with her wife, Rita. She came out as lesbian five years ago.<sup>274</sup> Arguably, this was the first time a professional athlete came out in Poland.*

*The first coming out of a Polish athlete happened in 2018 in the LGBT magazine “Replika”. Karolina Hamer, a professional swimmer*

<sup>272</sup> See, e.g. *weszlo.com*, ‘Weszło z Butami: Adam Frączczak Nie Podjeżdża Już Rowerem Do McDrive’a’ (*weszlo.com*, 27 February 2016) <<http://weszlo.com/2016/02/27/weszlo-z-butami-adam-fraczczak-nie-podjezdza-juz-rowerem-do-mcdrivea/>> accessed 19 July 2018; *weszlo.com*, ‘Weszło z Butami: Piotr Zieliński Zdenerwował Się Na Fakt, Został Pochwalony Za Włoski i Przyniósł Ciastka Do Szatni’ (*weszlo.com*, 25 April 2013) <<http://weszlo.com/2013/04/25/weszlo-z-butami-piotr-zielinski-zdenerwowal-sie-na-fakt-zostal-pochwalony-za-wloski-i-przyniosl-ciastka-do-szatni/>> accessed 19 July 2018; *weszlo.com*, ‘Gej w Szatni? Był Taki Jeden, Któremu Kuśka Stawała Jak Się Kapaliśmy Po Treningu’ (*weszlo.com*, 20 October 2017) <<http://weszlo.com/2017/10/20/gej-szatni-byl-taki-jeden-ktoremu-kuska-stawala-sie-kapalismy-treningu/>> accessed 19 July 2018.

<sup>273</sup> *Queer.pl*, ‘Sportowcy: nie outujcie się!’ (31 August 2011) <<https://queer.pl/news/192743/sportowcy-nie-outujcie-sie>> accessed 17 July 2018.

<sup>274</sup> Dawid Anteki, ‘Gwiazda basketu nie ukrywa, że jest lesbijką. Razem z partnerką pokochały Wrocław’ (*wroclaw.wyborcza.pl*, 14 April 2017) <<http://wroclaw.wyborcza.pl/wroclaw/7,35771,21641153,gwiazda-basketu-nie-ukrywa-ze-jest-lesbijka-razem-z-partnerka.html>> accessed 17 July 2018.

*who represented Poland in Paralympic Games in Athens revealed she is bisexual.*<sup>275</sup>

There is no information about Polish athletes who would be open about their transgender or intersex status.

**Case: Intersex athlete in the interwar period**

*Historically, Stanisława Walasiewicz (aka Stella Walsh), a Polish track and field athlete, who became a women's Olympic champion in the 100 metres in 1932, was found to be intersex after her death.*<sup>276</sup>

## Responses and Regulations

Few professional players, mostly retired ones, condemn homophobia.<sup>277</sup> The situation is better in other disciplines. Some straight professional athletes express support for LGB causes.

**Case: Straight allies in sports**

*In 2014, Dariusz "Tiger" Michalczewski, a renowned former boxer, supported the KPH's campaign "Arm in arm for equality" for the introduction of registered partnerships in Poland and the fight against homophobia.*<sup>278</sup> *In 2018, Robert Korzeniowski, a renowned Polish former racewalker expressed support for the recognition of same-sex unions in an interview.*<sup>279</sup>

Unlike some racist and antisemitic content, expressions of homophobia on the stadiums are not condemned by football authorities or elected officials. No effective measures have been taken to prevent, fight and punish the use of homophobic insults in sport, in particular in relation to football events. Homophobic hate speech is not an offense under Polish criminal law (see section "Right to life" above). In the absence of relevant hate speech provisions, expressions of homophobia can only be fought using general provisions of criminal law (crime of insult or defamation) or through civil law (action for

<sup>275</sup> Queer.pl, 'Karolina Hamer, paraolimpijka: jestem biseksualna' (28 May 2018) <<https://queer.pl/news/201354/karolina-hamer-paraolimpijka-jestem-biseksualna>> accessed 17 July 2018.

<sup>276</sup> Sarasota Journal, 'Ex-Olympian Stella Walsh Legally a Woman' (12 February 1981) <<https://news.google.com/newspapers?id=1P4cAAAAIBAJ&sjid=aI4EAAAAIBAJ&pg=6668%2C1265165>> accessed 19 July 2018.

<sup>277</sup> Kim and Szulc (n 266).

<sup>278</sup> KPH, 'Dariusz Michalczewski laureatem nagrody Sojusznik Roku' (*Kampania Przeciw Homofobii*, 11 September 2015) <<https://kph.org.pl/dariusz-michalczewski-laureatem-nagrody-sojusznik-roku/>> accessed 17 July 2018.

<sup>279</sup> Sergiusz Królak, 'Robert Korzeniowski wspiera gejów. Homofobia w sporcie istnieje?' (8 January 2018) <<https://plejada.pl/wideo/robert-korzeniowski-wspiera-gejow-homofobia-w-sporcie-istnieje/9x53h3f>> accessed 17 July 2018.

infringement of personal interests), i.e. options which have significant limitations compared to hate speech laws. Specifically, when a banner contains an insult directed to homosexual persons in general, and there is no individual who can be perceived as a victim, there is a very limited possibility to prosecute the culprits. Moreover, prosecution of discriminatory acts during matches, such as racist chanting, is impeded by the lack of adequate monitoring and the facts that many fans wear hoods.

In 2014 the Ministry of Sport and Tourism (MSiT) published a report on manifestations of discrimination in the Polish sports, which covered racism, antisemitism, xenophobia and homophobia.<sup>280</sup> The report indicated that there is no data regarding homophobic incidents in sports collected and analyzed. It also argues that no national sports association considers homophobia as a significant problem.

In 2015, the MSiT published the action plan "Sport Development Programme until 2020". The document argues that homophobia, similar to racism or xenophobia, is a serious problem and recommends "working on a joint declaration of public authorities and the sports community against homophobia in sport, as well as implementing good international practices related to combating this form of discrimination and supporting initiatives involving LGBT people in sport for all".<sup>281</sup>

Despite the declarations, relevant authorities rarely condemn cases of homophobia in football stadiums. Homophobia is seen as a 'lesser evil' than, e.g. racism or antisemitism, which is increasingly recognized as a problem in sports, and has met with some reactions from the Polish Football Association (PZPN).<sup>282</sup>

***Case: Fines for football clubs for homophobic and antisemitic chants and banners***

*In 2016 in Poznań, during the match between Lech Poznań and Arka Gdynia, local fans displayed a banner depicting the Poznań mayor Jacek Jaśkowiak with the caption "Poznań apologizes for rainbow Jacek", which related to the fact that the politician had*

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<sup>280</sup> Renata Włoch, 'Raport Dotyczący Wybranych Przejawów Dyskryminacji (Rasizm, Antysemityzm, Ksenofobia i Homofobia) w Polskim Sporcie Ze Szczególnym Uwzględnieniem Środowiska Kibiców Sportowych' <[http://www.nigdywiecej.org/docstation/com\\_docstation/62/r.\\_wloch\\_raport\\_dotyczacy\\_wybranych\\_przejawow\\_dyskryminacji.\\_warszawa\\_ministe.pdf](http://www.nigdywiecej.org/docstation/com_docstation/62/r._wloch_raport_dotyczacy_wybranych_przejawow_dyskryminacji._warszawa_ministe.pdf)> accessed 5 May 2018.

<sup>281</sup> MSiT, 'Program Rozwoju Sportu Do Roku 2020' <<https://bip.msit.gov.pl/bip/projekty-aktow-prawnyc/inne-dokumenty-rzadowe/1570,Program-Rozwoju-Sportu-do-roku-2020.html>> accessed 7 July 2018.

<sup>282</sup> PN, 'Polskie kluby piłkarskie ukarane. Za rasizm i homofobię kiboli' (*Portal STRAJK*, 29 September 2016) <<https://strajk.eu/polskie-kluby-pilkarskie-ukarane-za-rasizm-i-homofobie-kiboli/>> accessed 19 July 2018.

*participated in the recent Pride event. Fans chanted "Jaškowiak you motherfucker" and "Jaškowiak! What? You slut!" The case was taken up by the League of Ekstraklasa - the organizer of football matches in Poland. Although the Poznań club had already been punished in the past for discriminatory behaviours of fans, the penalty was set at mere 5,000 PLN.*

*As a comparison, Legia Warsaw suffered much more serious consequences. Legia fans chanted "Jude, Jude, Jude BVB" during the match with Borussia Dortmund. The authorities of the Warsaw club argued that there was no evidence of antisemitism and the fans chanted "nutte BVB (German for "BVB slut"). The European football federation UEFA did not believe in the explanation and punished Legia by closing the stadium for fans for the next game with Real Madrid and ordering Legia to pay 80,000 EUR fine.<sup>283</sup>*

As a reply to the questions regarding actions to implement the Recommendation, the Ministry of Sport and Tourism only referred to the above-mentioned study and report published in 2014.<sup>284</sup> The Ministry does not describe any specific action aimed at creating or disseminating standards related to LGBT persons.

Authorities also do not take action to effectively implement the recommendations from the instruments of international law relating to discrimination in sport. The Act on safety of mass events<sup>285</sup>, which was intended to regulate the security during sports events in a comprehensive manner, does not contain guarantees against discriminatory insults.

The PZPN adopted policies relating to the issue of discrimination. The Football Code of Ethics only mentions discrimination on the ground of nationality, ethnicity and religion, but adds that it is not allowed to "humiliate anyone neither in your own, nor in the opponent team".<sup>286</sup> The Disciplinary Regulations provide sanctions for, among other offences, presenting discriminatory content or shouting or committing any other act of this nature at the time immediately before or after the match. The list of protected characteristics includes race, colour, language, religion and origin, but the catalogue is open.<sup>287</sup> While the document is in force since 2014, there is no evidence to show that its

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<sup>283</sup> *ibid.*

<sup>284</sup> Letter of the Ministry of Sports and Tourism of 27 April 2018

<sup>285</sup> Act on safety of mass events of 20 March 2009 (Journal of Laws 2009 number 62 item 504).

<sup>286</sup> PZPN, 'Piłkarski Kodeks Etyczny'

<[https://www.pzpn.pl/public/system/files/site\\_content/635/464-Pi%20karski%20kodeks%20etyczny.pdf](https://www.pzpn.pl/public/system/files/site_content/635/464-Pi%20karski%20kodeks%20etyczny.pdf)> accessed 7 July 2018.

<sup>287</sup> PZPN, 'Regulamin Dyscyplinary Polskiego Związku Piłki Nożnej'

<[https://www.pzpn.pl/public/system/files/site\\_content/635/562-PDF%20REGULAMIN%20DYSCYPLINARNY%20UCHWALONY%20NA%20WALNYM%20ZGROMADZENIU%20DELEGAT%C3%93W%20W%20DNIU%2027%20MAJA%202014.pdf](https://www.pzpn.pl/public/system/files/site_content/635/562-PDF%20REGULAMIN%20DYSCYPLINARNY%20UCHWALONY%20NA%20WALNYM%20ZGROMADZENIU%20DELEGAT%C3%93W%20W%20DNIU%2027%20MAJA%202014.pdf)> accessed 7 July 2018.

provisions have been applied by the PZPN to discrimination against LGBT persons.

## LGBT Sports Initiatives

There are several sports initiatives in Poland which are LGBT-inclusive or specifically gather LGBT people. A variety of disciplines are covered, including team sports and martial arts. The association “Chrząszczyki” (“Little beetles”) has female football team members who are openly lesbian or bisexual.<sup>288</sup> “Volup” is a gay volleyball club which organizes the annual international Volup Summer Cup tournament.<sup>289</sup> The Ruchomy Klub Sportowy “Gwiazda” (Moving Sports Club “Star”) offers queer-friendly fighting sports activities.<sup>290</sup> The grass-roots Alternatywny Klub Sportowy “Zły” (Alternative Sports Club “Bad”) invites everyone who shares their “democratic-sport philosophy which is based on openness and diversity”.<sup>291</sup>

### **Case: Football v homophobia**

*In February 2018 Fare Polish member KS Chrząszczyki hosted a screening of the documentary “The Chosen Few” followed by a discussion on LGBTQ+ representation and visibility in Polish football and the need for LGBTQ+ clubs/events.*

*On the following day, a football tournament was held in the OSiR Targówek. The players wore FvH branded t-shirts.<sup>292</sup>*

All the above initiatives are of amateur nature. Their existence however proves that non-heteronormative sport exists and that there is a need to create friendly spaces for LGBT people in order for them to be active in sports.

The Ministry of Sport and Tourism is not involved in the promotion of LGBT sports clubs.

## Recommendations

- 4) Make the Ministry of Sport and Tourism and those organizations subjected to it legally responsible for countering LGBTI-phobia in sports.
- 5) Ensure effective and adequate penalties for football clubs in the case of LGBTI-phobia on stadiums

<sup>288</sup> See the club’s page at <https://www.facebook.com/Chrzaszczki>.

<sup>289</sup> See the club’s website at [http://volup.pl/pl\\_PL/](http://volup.pl/pl_PL/).

<sup>290</sup> See the club’s page at <https://www.facebook.com/RKSGwiazda/>.

<sup>291</sup> See the club’s website at [http://aks-zly.pl/our\\_club\\_aks-zly/](http://aks-zly.pl/our_club_aks-zly/).

<sup>292</sup> Fare, ‘List of FvH Activities 2018’ (Fare network)

<<http://farenet.org/campaigns/football-v-homophobia-month-action/football-v-homophobia-month-of-action/list-activities-2018/>> accessed 19 July 2018.



- 6) Ensure that the sports associations' ethics or disciplinary regulations contain non-discrimination provisions inclusive of SOGIESC.

## X. Right to Seek Asylum

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*Karolina Więckiewicz & Katarzyna Słubik*

- Generally speaking, well-founded fear of persecution on grounds of SOGI may be a sufficient reason for granting refugee status and asylum in Poland. In practice, there are cases of refusal and expulsion of foreigners with legitimate claims for international protection based on their SOGI. In particular, claims can be rejected on the basis of internal flight or relocation alternative or when there are discrepancies in the testimony.
- The merits of the case are decided mainly based on the applicant's testimony. No psychological or other tests in refugee procedures are required or performed. Applicants are not asked to provide detailed account of their sexual practices or to produce "evidence" to prove their SOGI in asylum claims.
- Theoretically, asylum seekers are not sent back to the country where their life or freedom may be threatened or there is a fear of torture, inhuman or degrading treatment and punishment because of their SOGI. However, the Border Police routinely deny asylum seekers at the Belarus-Poland border the right to apply for asylum thus forcing them to remain in unsafe circumstances or return to their country of origin. This may affect LGBT asylum seekers, e.g. those fleeing persecution in Chechnya or Tajikistan.
- There are no specific measures in place to prevent violence against LGBT asylum seekers deprived of their liberty, but LGBT asylum seekers can benefit from general rules on "sensitive cases". Alternatives to detention are not routinely offered to LGBT asylum seekers.
- People are placed in detention centres based on the information in their official documents. There are no good practices or procedures regarding self-determined name and gender identity of transgender asylum seekers.
- There are no official statistics on the number of asylum proceedings. Between 2012 and 2018, one Polish NGO handled nine cases of persons seeking international protection in Poland because of fear of persecution on grounds of their SOGI.

### Grounds for Protection

Rules governing the award of legal protection to foreigners on Polish territory are contained in article 57 of the Constitution, providing for the right to asylum and refugee status, and in the Act on granting

protection to aliens (AoGPA).<sup>293</sup> In accordance with Article 13 section 1 of AoGPA, an alien is granted a refugee status if as a result of legitimate fear of persecution in their country of origin because of race, religion, nationality, political opinion or membership in a particular social group cannot or do not want to enjoy the protection of that country. A particular social group might constitute a group whose members share a common sexual orientation, but sexual orientation cannot be understood to include acts considered to be criminal in accordance with Polish law. Protection should be granted also against persecution or serious harm caused by events that occurred after leaving the country of origin, especially if they were an expression and continuation of convictions or sexual orientation held in the country of origin (art. 17 of AoGPA). In addition to such protection, the law provides for the possibility of granting subsidiary protection (art. 15 of AoGPA), permission to stay based on humanitarian grounds (art. 348 of Act on Aliens, AoA),<sup>294</sup> tolerated stay (art. 351 of AoA) and asylum (art. 90 of AoGPA).

### Verification of Applicants' Sexual Orientation

Considering the verification of applicants' sexual orientation, the Office for Foreigners states<sup>295</sup> that it takes into consideration the judgement of the Court of Justice of the European Union in the joined cases C - 148/13 to C - 150/13 A, B, C v Staatssecretaris van Veiligheid en Justitie,<sup>296</sup> as well as the guidelines set out in the publication "Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe".<sup>297</sup> As such, theoretically, the declaration of the applicant about their sexual orientation or gender identity should be a starting point. In verifying the sexual orientation of the applicant, human dignity and the right for private and family life should be respected. Failure to answer questions relating to stereotyped notions of homosexuality cannot be a sufficient reason to reject an applicant. Also questions relating to the applicant's sexual practices should be considered as infringing the right to respect to private and family life and are as such not in line with the Charter of Fundamental Rights. Additionally, statements of the applicant for asylum cannot be considered as lacking credibility merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution.

While the Office for Foreigners referred to international guidelines, it did not provide any good practices or actual actions undertaken to

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<sup>293</sup> Act on granting protection to aliens on the territory of the Republic of Poland of 13 June 2003 (Journal of Laws 2003 number 1776).

<sup>294</sup> Act on aliens of 12 December 2013 (Journal of Laws 2017 number 2206).

<sup>295</sup> Letter from the Office for Foreigners of 26 April 2018.

<sup>296</sup> A, B, C v *Staatssecretaris van Veiligheid en Justitie* [2014] Court of Justice of the European Union Joined Cases C-148/13 to C-150/13.

<sup>297</sup> Sabine Jansen and Thomas Spijkerboer, 'Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe' <<http://www.refworld.org/docid/4ebba7852.html>> accessed 7 July 2108.

ensure the realization and implementation of the Recommendation. While specific guidelines have not been shared, NGOs practice shows that asylum interviews are indeed conducted in line with the judgement A, B and C v Staatssecretaris van Veiligheid en Justitie judgement<sup>298</sup> and the earlier X, Y and Z v Minister voor Immigratie en Asiel judgement.<sup>299</sup> Applicants are asked to tell their story without being inquired about their sexual practices or stereotypes about their sexual orientation. Videos or images are not allowed as evidence even though this rule is not enshrined in law. Inadmissibility of some evidence leads to high reliance on applicant's testimony. It can be observed that applicant's credibility is assessed very strictly and even minor discrepancies or lapses in an interview might undermine their chances for protection.

***Case: Refusal to grant asylum due to discrepancies in the statements***

*In 2017, an Iranian asylum seeker was denied asylum on the grounds of „not being a homosexual”, even though he provided video material of sexual practices among him and his male partners and even though his former sexual partner confirmed their homosexual relationship. The reasons for refusal were a couple of minor discrepancies between his first and second testimony.*

The practice of NGOs shows that since ca. 2013, no psychological or other tests in refugee procedures have been required or performed. An applicant might be interviewed in the presence of a psychologist, but only when additional reasons for their protection arise, e.g. when they have been victims of violence or suffer from psychological trauma. Still, some of the CJEU guidelines are not implemented. In cases where the applicant has not mentioned their sexual orientation as a ground of persecution on the first occasion, they are often not considered credible and their case is refused. This was a case for three out of nine cases overseen by the Association for Legal Intervention between 2012-2018.

There is no practice of rejecting claims based on the argument that applicants can avoid persecution in their home country by hiding their sexual orientation or gender identity. However, there is evidence of claims being rejected on the basis of an internal flight or relocation alternative, which can often be understood very widely.

***Case: Refusal to grant asylum due to failing to mention sexual orientation***

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<sup>298</sup> A, B, C v Staatssecretaris van Veiligheid en Justitie (n 296).

<sup>299</sup> X, Y, Z v Minister voor Immigratie en Asiel [2013] Court of Justice of the European Union Joined Cases C-199/12-C-201/12.

*In 2018, a citizen of Liban country was refused asylum because he did not mention his bisexual orientation to immigration authorities on the first three occasions he had.<sup>300</sup>*

**Case: Refusal to grant asylum due to internal flight or relocation alternative**

An asylum seeker of Chechen nationality, a lesbian, was denied asylum because of an internal flight alternative into Russian Federation.<sup>301</sup>

## No-Refoulement Rule

According to the there is no official list of safe countries of origins in Poland. Asylum seekers are not generally sent back to the country where their life or freedom may be threatened or there is a fear of torture, inhuman or degrading treatment and punishment because of their sexual orientation or gender identity. In accordance with article 33, section 4 AoGPA, initiation of proceedings on granting refugee status shall suspend execution of the expulsion decision to the date of service of the final decision on the matter to an alien. A non-refoulement rule can be found in the deportation provisions: according to article 348 AoA, persons who cannot be expelled because of the non-refoulement rule should be granted a residence permit on humanitarian grounds.

**Case: Denying asylum seekers the right to apply for asylum**

*Poland is currently infringing its international obligations in the area of asylum by not accepting the majority of asylum claims at the Poland-Belarus border (Terespol border crossing). This situation has been a reason for concern of various human rights organizations, as well as the Polish Ombudsman.<sup>302</sup> This problem concerns LGBT asylum seekers from Chechnya and other locations within the Commonwealth of Independent States where LGBT people are persecuted. LGBT asylum seekers might be de facto sent back to the country where their life or freedom may be threatened or there is a fear of torture, inhuman or degrading treatment and punishment because of their SOGI. The scale of pushbacks of LGBT asylum seekers from Chechnya or Tajikistan from the Polish border cannot be estimated, because their claims are not registered. Also, conditions for stating your case at the border make it impossible for the applicants to disclose their real grounds for persecution.<sup>303</sup>*

<sup>300</sup> Source: Association for Legal Intervention.

<sup>301</sup> Source: Association for Legal Intervention.

<sup>302</sup> Letter of the Polish Ombudsman to the Chief of Border Police of 7 April 2017.

<sup>303</sup> For more details on the procedures at the Polish eastern border see Aleksandra Chrzanowska and others, *At the Border: Report on Monitoring of Access to the Procedure for Granting International Protection at Border*

## Prevention of Discrimination and Violence

There are no specific measures adopted to prevent the risk of physical violence, including sexual harassment, verbal aggression or other forms of harassment of asylum seekers deprived of their liberty and to provide access to information relevant to their particular situation. According to the information provided by the Office for Foreigners, the Border Police in 2015 implemented rules for particular care for foreigners who require special treatment based on different needs. The algorithm indicates the ways officials proceed in case when special needs of vulnerable detainees are identified. The aim is to guarantee the best possible conditions of detention for such people. The document does not refer to sexual orientation or gender identity as possible grounds for such special treatment. There is also no information available regarding the level of implementation of these procedures and their actual application to LGBT people. It should be noted that there had been concerns regarding the implementation of these rules in practice raised by the Polish Ombudsman.<sup>304</sup> They did not refer to LGBT people and their needs but raised certain cases in which the screening and assessment of special needs were not done properly.

The Act on Foreigners explicitly regulates the possibility for alternative measures, such as: obligation to deposit a travel document, obligation to report oneself at the Border Police's facility regularly, a financial deposit or obligation to live in a certain place. These alternative measures can be implemented by the Border Police or by a court when it decides not to put a foreigner in detention. The Office for Foreigners declares that these alternative measures are in first place dedicated for those who belong to the "sensitive" groups and as such can also be imposed on "the group referred to in the questionnaire".<sup>305</sup> Nevertheless the Office did not provide any specific or detailed information about the actual cases in which these alternative measures were implemented in cases of LGBT people. Also, according to the law, neither „vulnerability” nor „sexual orientation” are among legal reasons for which asylum seekers cannot be placed in detention. No specific screening for vulnerabilities is made towards asylum seekers who might be placed in detention, therefore decision between alternatives and detention is made regardless of their identity or sexual orientation.

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*Crossings in Terespol, Medyka, and Warszawa-Okęcie Airport* (SIP 2016)  
<<https://interwencjaprawna.pl/en/files/at-the-border.pdf>> accessed 7 July 2018.

<sup>304</sup>Letter of Polish Ombudsman to the Chief of the Border Police of 30 June 2017 (KMP.572.4.2016.AI).

<sup>305</sup> Letter from the Office for Foreigners of 26 April 2018.

## Situation of Transgender Asylum Seekers

There are no good practices or procedures indicated by public institutions regarding self-determined name and gender identity of a transgender asylum seeker. The only information provided by the Office for Foreigners is that people are placed in detention centres based on the information in their official documents. This means that trans people who have not completed the procedure of changing the gender indication in their document (or cannot do this or choose not to) cannot be placed in detention with respect to their actual gender if that is not reflected in their documents.

There are no good practices regarding training of relevant officials in terms of sensitivity in addressing trans people and treating them with respect regarding their identity.

## Statistics

There are no official statistics on the number of proceedings. The Office for Foreigners did not provide any specific information regarding the number of proceedings in which a person indicated that their sexual orientation or gender identity were the issue because of which they were seeking international protection, because such statistics are not collected. Between 2012 and 2018, one Polish NGO handled nine cases of persons seeking international protection in Poland because of fear of persecution on grounds of their SOGI.

## Recommendations

- 5) Introduce sensitivity training on SOGI to staff of the Office for Foreigners and Border Police
- 6) Introduce effective system of collecting information on asylum claims based on SOGI.
- 7) Prevent detention of persons whose SOGI contribute to their enhanced vulnerability through effective screening and assessment system.
- 8) Introducing training on sensitivity and country of origin to interpreters engaged in official interpretations of asylum interviews to secure clarity and consistency.

## XI. National Human Rights Structures

*Paweł Knut*

- The Commissioner for Human Rights (RPO) and the Government Plenipotentiary for Civil Society and Equal Treatment (PRT) are two public institutions creating Polish human rights structures. While the RPO is independent from the government the PRT is an institution inside the governmental framework.
- During the whole analyzed period RPO has been using his competences extensively to address the issue of intolerance based on sexual orientation and gender identity. RPO's engagement and dedication led to a positive evaluation of his work by the LGBT NGOs and LGBT community.
- Since appointing Adam Bodnar on the position of RPO in 2015 this institution became an object of constant attacks of right-wing politicians aimed at discrediting the work and the person of Adam Bodnar. These attacks as well as attempts to reduce the budget of this institution might result in weakening the office of PRO and hampering its effectiveness to perform assigned tasks.
- In the period between 2011 and 2015 PRT engaged in a meaningful cooperation with LGBT organizations and explicitly addressed the need to provide equal treatment towards LGBT persons. Since 2015, when the Law and Justice party formed a government the role of PRT became marginal. LGBT NGOs are of the opinion that currently this body does not play any role in enhancing the protection of LGBT persons in Poland.

### Introduction

The Commissioner for Human Rights (RPO) and the Government Plenipotentiary for Civil Society and Equal Treatment (PRT) are two public institutions on which the structure of Polish national human rights protection is built. Both bodies are directly authorized by law to address discrimination against LGB persons and indirectly to address discrimination against transgender persons.

### Commissioner for Human Rights

In accordance with art. 208 (1) of the Constitution and art. 1 (2) of the Act on the Commissioner for Civil Rights (AoRPO)<sup>306</sup>, the RPO safeguards the freedoms and rights of persons and citizens specified in the Constitution (which provides an open catalogue of protected

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<sup>306</sup> Act of 15 July 1987 on the Commissioner for Civil Rights (consolidated text, Journal of Laws 2017, item 958 as amended).



characteristics) and other normative acts. This also includes safeguarding the implementation of the principle of equal treatment arising from the EU legislation. In Polish context the implementation of this principle is guaranteed by the Equality Act (which is supposed to implement several EU directives creating the legal framework for equal treatment in the EU). According to this Act, the RPO is a competent body in preventing the violation of the principle of equal treatment (art. 18 of the Act).

The RPO has wide competences, including examining individual cases, requesting the competent public institution to examine individual cases, initiating or participating in legal proceedings, including, among others, proceedings before administrative bodies, courts, the Constitutional Tribunal and the Supreme Court (art. 12 – 14, art. 16 AoRPO). The RPO is legitimated to conduct on a regular basis research on different issues relating to the equal treatment principle<sup>307</sup>. The scope of activities conducted by the RPO covers all discriminatory grounds, including sexual orientation and gender identity (so far, sex characteristics have not been an object of separate attention).

The RPO also has the authority to receive requests from individual persons. According to the RPO's latest annual report on activities in the field of equal treatment, in 2016 the RPO received 622 requests concerning equal treatment, of which 59 cases (9.5 per cent) addressed discrimination on the grounds of sexual orientation and 9 (1.5 per cent) addressed discrimination on the grounds of gender identity.<sup>308</sup> Requests addressing discrimination on the grounds of sexual orientation constituted the third highest group of cases lodged to the RPO that year, following the requests addressing discrimination on the grounds of disabilities (211 cases, 33.9 per cent) and discrimination on the grounds of sex (60 cases, 9.7 per cent).

In the whole analyzed period the RPO has been using his competences extensively to address the issue of intolerance based on SOGI.

***Case: The RPO's intervention in the case of the printer from Łódź***

*The RPO intervened in the case of the employee of the printing company from Łódź, who refused to provide the service to the LGBT foundation due to his religious beliefs. After receiving the complaint from the foundation, RPO sent a letter to the local Police unit in*

<sup>307</sup> RPO, Badania antydyskryminacyjne [Antidiscrimination research] <https://www.rpo.gov.pl/pl/content/badania-antydyskryminacyjne-RPO>, accessed 17 January 2018.

<sup>308</sup> RPO, Informacja o działalności Rzecznika Praw Obywatelskich w obszarze równego traktowania oraz o przestrzeganiu zasady równego traktowania w Rzeczypospolitej Polskiej w roku 2016 [Information on the activities of the Commissioner for Human Rights in the area of equal treatment and protection of the principle of equal treatment in the Republic of Poland in 2016] <https://www.rpo.gov.pl/sites/default/files/Informacja%202016%20RT%20DRUK.pdf>, p. 148.

*which he presented broad arguments supporting the foundation's position and characterized this situation as unlawful discrimination on the grounds of sexual orientation. As a result of this intervention the Police brought accusation against the employee to the court stating that his refusal resulted in the violation of the art. 138 of the Code of Misdemeanours (which prohibits unjustified refusal to provide a service). The employee was found guilty twice (in the judgements of the court of the first and the second instance). In June 2018, the Supreme Court dismissed the cassation of the Prosecutor General, who requested to quash the judgement and acquit the printer.<sup>309</sup> The Supreme Court assessed that there was no conflict of conscience or breach of the principle of freedom of contract in the case. The court indicated that the entrepreneur was obliged to provide services, because he offered them publicly and the provisions that oblige him to do so also have an anti-discriminatory character.*

**Case: RPO's intervention in the case of the denial to transcribe birth certificate of a child born to same-sex married couple**

*In 2016 RPO got involved in the case regarding denial to transcribe into Polish Civil Register the British birth certificate of a child born in London to same-sex married couple of Polish citizens living in Great Britain. The parents applied for the transcription to confirm Polish citizenship of their child and to obtain document confirming child's identity. According to Polish law foreign civil status record serves as evidence of an event (for instance the birth of a child, marriage or death), and may be transcribed to the Polish Civil Register through transcription. The transcription is mandatory when a Polish citizen wishes to obtain a Polish identity card, passport or Polish Resident Number (PESEL). Moreover, to acquire Polish citizenship at least one of the child's parents must be a Polish citizen. RPO supported applicants' motion and joined the proceedings. Although the birth-mother of a child was a Polish citizen and she applied for the transcription to obtain passport for her child, the Head of the Registry Office denied the motion. The Head argued that according to Polish law one can only have a mother and a father, and both of their names must be disclosed in the birth certificate. Head of the Registry Office was also of the opinion that birth certificate indicating two persons of the same-sex as parents was violating fundamental principles of the Polish legal order. Despite of the RPO engagement in this proceeding in June 2018 the Supreme Administrative Court confirmed in its judgment that the refusal of the transcription was lawful.<sup>310</sup>*

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<sup>309</sup> RPO, Sprawa drukarza z Łodzi [The printer from the Lodz case] (14 June 2018) <https://www.rpo.gov.pl/pl/postepowania-strategiczne-rpo/sprawa-drukarza-z-lodzi>, accessed 28 July 2018.

<sup>310</sup> RPO, Transkrypcja aktu urodzenia dla dziecka urodzonego w Londynie z małżeństwa jednopłciowego [Transcription of the birth certificate of the child born in London to same-sex marriage], (5 December 2016), <https://www.rpo.gov.pl/pl/postepowania-strategiczne-rpo/transkrypcja-aktu->

**Case: The attacks on LGBT NGOs' offices**

*In 2016, the Campaign Against Homophobia's office was attacked three times and the Lambda Warsaw's office was attacked twice. After another attack in 2017 RPO immediately issued a statement in which he condemned the attacks and described these events as "violence motivated by homophobic and transphobic prejudices". He also met with representatives of NGOs at the KPH's office after one of the attacks and expressed his support for the attacked NGOs.<sup>311</sup>*

**Case: RPO's research on the LGBTI issues**

*The RPO conducts regular research on LGBT issues (so far intersex issues have not been covered). In 2014 the RPO issued a publication "Equal rights of patients – non-heterosexual persons and healthcare", which included results from research conducted on request of RPO.<sup>312</sup> In 2016 the RPO published the report "Equal treatment in employment regardless of gender identity."<sup>313</sup> In 2017 the RPO published the report "Crimes motivated by prejudice. Analysis and recommendations" which covered the topic of crimes against transgender and non-heterosexual persons.<sup>314</sup>*

The RPO is also a partner or a patron in some initiatives by LGBT organizations.

**Case: The RPO and LGBT initiatives**


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urodzenia-dla-dziecka-urodzonego-w-londynie-z-ma%C5%82%C5%BCe%C5%84stwa-jednop%C5%82ciowego, accessed 28 July 2018.

<sup>311</sup> RPO, 'Oświadczenie Rzecznika Praw Obywatelskich w sprawie kolejnego ataku na siedzibę Kampanii Przeciw Homofobii' (*Rzecznik Praw Obywatelskich*, 9 May 2017) <<https://www.rpo.gov.pl/pl/content/oswiadczenie-rzecznika-praw-obywatelskich-w-sprawie-kolejnego-ataku-na-siedzibe-kampanii-przeciw>> accessed 30 July 2018.

<sup>312</sup> RPO, Równe traktowanie pacjentów - Osoby Nieheteroseksualne w Opiece Zdrowotnej. Analiza i Zalecenia [Equal rights of patients – non-heterosexual persons and healthcare. Analysis and Recommendations], (Warsaw: RPO, 2014), <https://www.rpo.gov.pl/pl/content/rowne-traktowanie-pacjentow-epub>.

<sup>313</sup> RPO, Równe traktowanie w zatrudnieniu bez względu na tożsamość płciową. Analiza i zalecenia [Equal treatment in employment regardless of gender identity. Analysis and Recommendations] (Warsaw: RPO, 2016) <https://www.rpo.gov.pl/pl/content/rowne-traktowanie-w-zatrudnieniu-bez-wzgledu-na-tozsamosc-plciowa>.

<sup>314</sup> Anna Mazurczak and others, Przepęstwa Motywowane Uprzedzeniami Względem Osób Starszych, Osób z Niepełnosprawnościami, Osób Homoseksualnych i Transpłciowych. Analiza i Zalecenia [Crimes Motivated by Prejudice against the Elderly, People with Disabilities, Homosexual and Transgender Persons. Analysis and Recommendations] (Warsaw:RPO 2017) 28 <https://www.rpo.gov.pl/pl/content/raport-przesteps-twa-motywowane-uprzedzeniami-analiza-i-zalecenia>, accessed 25 December 2017.

*The RPO is an associate partner in the international projects “Come Forward: empowering and supporting victims of anti-LGBT hate crime” and “Call it hate: Raising Awareness of Anti-LGBT Hate Crime which are implemented in Poland by Lambda Warsaw (both) and Love Does Not Exclude (the latter only).<sup>315</sup>*

*The RPO gave his patronage to the social campaign on domestic violence against LGBT people conducted by Lambda Warsaw in 2017<sup>316</sup> and to the publication about the Polish jurisprudence in LGBT cases prepared by the KPH.<sup>317</sup>*

Despite the positive assessment of the RPO's efforts, we believe that granting the RPO additional function (of equal treatment body), competent in matters of violation of the principle of equal treatment, was implemented without the adequate increase of the institution's budget. Moreover, because the activities and statements of the current RPO, Adam Bodnar, do not comply with policies of the Law and Justice government, every year since appointing Adam Bodnar on this position in 2015 the Parliament grants RPO a budget which is tighter than requested.<sup>318</sup> Moreover, different politicians and persons related to Law and Justice party are constantly trying to discredit the work and the person of Adam Bodnar.<sup>319</sup> This situation raises a deep concern of NGOs, as these actions might result in weakening the office of the RPO and hampering its effectiveness to perform assigned tasks.

<sup>315</sup> <http://www.lgbthatecrime.eu>

<sup>316</sup> RPO, Międzynarodowy Dzień Walki z Homofobią i Transfobią [International Day Against Homophobia and Transphobia] <https://www.rpo.gov.pl/pl/content/międzynarodowy-dzień-walki-z-homofobią-i-transfobią>, accessed 17 May 2017.

<sup>317</sup> RPO, Publikacja "Orzecznictwo - prawa osób LGBT w Polsce" pod Honorowym Patronatem Rzecznika Praw Obywatelskich [Publication 'Jurisprudence – rights of LGBT persons in Poland' under the patronage of the Commissioner for Human Rights] <https://www.rpo.gov.pl/pl/content/publikacja-orzecznictwo-prawa-osob-lgbt-w-polsce-pod-honorowym-patronatem-rzecznika-praw>, accessed 21 January 2016.

<sup>318</sup> RPO, Informacja Rzecznika Praw Obywatelskich o działaniach podjętych przez Rzeczpospolitą Polską w celu implementacji postanowień Konwencji o prawach osób niepełnosprawnych w latach 2015-2017 [Information of the Commissioner for Human Rights on actions taken by the Republic of Poland to implement the provisions of the Convention on the Rights of Persons with Disabilities in 2015-2017],

[https://www.rpo.gov.pl/sites/default/files/Informacja%20RPO%20dla%20komitetu%20ONZ%20z%20wdra%C5%BCania%20Konwencji%20o%20prawach%20os%C3%B3b%20niepe%C5%82nosprawno%C5%9Bciam%20%28j%C4%99z.%20polski%29\\_0.pdf](https://www.rpo.gov.pl/sites/default/files/Informacja%20RPO%20dla%20komitetu%20ONZ%20z%20wdra%C5%BCania%20Konwencji%20o%20prawach%20os%C3%B3b%20niepe%C5%82nosprawno%C5%9Bciam%20%28j%C4%99z.%20polski%29_0.pdf), p. 3, accessed 31 January 2018.

<sup>319</sup> Daniel Flis, Oko Press, Byli Rzecznicy Praw Obywatelskich o ataku Muszyńskiego na Bodnara: 'Naganna próba dyskredytacji RPO' [Former Commissioners for Human Rights on Muszyński's attack on Bodnar: 'A blameworthy attempt to discredit the RPO'] <https://oko.press/byli-rzecznicy-praw-obywatelskich-o-ataku-muszynskiego-na-bodnara/>, accessed 5 July 2018.

## The Plenipotentiary for Civil Society and Equal Treatment

The PRT office was established in the Act on Equal Treatment as the new institution inside the structure of the government. The main purpose of the creation of this institution was to secure the inclusion of the equal treatment issues in the governmental plans and activities. According to art. 21 (2) of the Act on Equal Treatment PRT – among others - elaborates and gives opinions on draft bills of acts regarding the principle of equal treatment, carries out analyzes and assessments of legislation in terms of respecting the principle of equal treatment and cooperates with national organizations, including trade unions and employers' associations. Comparing to the RPO, the PRT is not equipped with instruments allowing this institution to examine individual complaints as well as to initiate or participate in legal proceedings.

In practice, the role played by the PRT and the PRT's effectiveness is strictly connected with the approach of each government towards LGBT equal treatment issues. Since 2015, when the Law and Justice party formed a government the role of PRT became marginal. The previous cooperation (before 2015) was also usually limited to and relied on encouraging the PRT to take specific actions in favour of LGBT persons. However, it needs to be mentioned that when this office was held by Agnieszka Kozłowska-Rajewicz (2011 - 2014) and Małgorzata Fuszara (2014 - 2015) the PRT engaged in a meaningful cooperation with LGBT organizations and explicitly addressed the need to provide equal treatment towards LGBT persons and recognize hate speech and hate crimes targeting this community.

### ***Case: PRT's publication regarding discrimination based on sexual orientation in employment***

*In 2015 PRT published a guidebook addressed both to employees and employers regarding discrimination based on sexual orientation in employment.<sup>320</sup>*

### ***Case: PRT patronage over the KPH guidebook for teachers 'Lesson of Equality'***

*In 2013 the PRT Agnieszka Kozłowska-Rajewicz gave patronage over the KPH guidebook for teachers 'Lesson of Equality'. When commenting this decision she stated that 'I decided to give this patronage, because there is a lack of materials in Poland that could*

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<sup>320</sup> PRT, Informator dla pracowników i pracownic. Dyskryminacja ze względu na orientację seksualną w zatrudnieniu [Guidebook for employers and employees. Discrimination on the grounds of sexual orientation in employment] <https://www.spoleczenstwoobywatelskie.gov.pl/informator-dla-pracownikow-i-pracownic>.

*help teachers to understand the problems of non-heterosexual students'.<sup>321</sup>*

As a side note it needs to be mentioned that the PRT was the only institution that published the text of the Recommendation CM/Rec(2010)5 on its official website.<sup>322</sup> The text of this Recommendation has been available on PRT's website since the first monitoring of the implementation of the Recommendation in 2012.

The current PRT Adam Lipiński (appointed in 2016) has been showing no interest in LGBT issues. The information published on the PRT's official website relating to PRT's interventions in this field refers only to actions undertaken by previous PRTs.<sup>323</sup> Last activities of the PRT regarding LGBT issues reported on his website are from March 2016, when PRT condemned attacks on KPH office.<sup>324</sup> However this reaction was not PRT's own initiative. It resulted from the strong criticism met by the PRT after lack of his reaction to previous attacks on KPH office.<sup>325</sup> The KPH and Lambda Warsaw are of the opinion that this body does not play any meaningful role in enhancing the protection of LGBT persons in Poland.

## Recommendations

- 3) Resigning from attacks on the office of Commissioner for Human Rights as well as attempts to reduce budget of this institution.
- 4) Engaging by the governmental Plenipotentiary for Equal Treatment into a meaningful cooperation with LGBT NGOs.

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<sup>321</sup> Polska Times, Podręcznik pod patronatem minister Kozłowskiej-Rajewicz: Polonez na studniówce to homofobia [Handbook under the patronage of Minister Kozłowska-Rajewicz: Polonaise at the prom is a homophobia], <http://www.polskatimes.pl/artykul/895358.podrecznik-pod-patronatem-minister-kozlowskiejrajewicz-polonez-na-studniowce-to-homofobia.id.t.html>, accessed 16 May 2013.

<sup>322</sup> PRT, [https://www.spoleczenstwoobywatelskie.gov.pl/sites/default/files/rec\\_cm\\_20\\_10\\_5\\_rekomendacja\\_pl\\_2\\_1.pdf](https://www.spoleczenstwoobywatelskie.gov.pl/sites/default/files/rec_cm_20_10_5_rekomendacja_pl_2_1.pdf)

<sup>323</sup> PRT, Interwencje. Dyskryminacja ze względu na orientację seksualną [Interventions. Discrimination based on sexual orientation] <https://www.spoleczenstwoobywatelskie.gov.pl/interwencje?tid=11>.

<sup>324</sup> PRT, Oświadczenie Pełnomocnika w sprawie ataków na organizacje LGBT [The Plenipotentiary's statement regarding the attacks on LGBT organizations] <https://www.spoleczenstwoobywatelskie.gov.pl/aktualnosci/oswiadczenie-pelnomocnika-w-sprawie-atakow-na-organizacje-lgbt>, accessed 3 March 2016.

<sup>325</sup> Newsweek.pl, Atak na siedzibę KPH. [Attack on KPH's office] (Newsweek, 9 May 2017) <http://www.newsweek.pl/polska/spoleczenstwo/atak-na-siedzibe-kph-homofobi-czuja-sie-w-polsce-bezkarni.artykuly.409882.1.html>, accessed 28 July 2018.



## XII. Discrimination on Multiple Grounds

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*Karolina Gierdal*

- There is no legislation that would directly introduce the definition of multiple discrimination or explicitly prohibit it.
- There are no known state measures that would pro-actively identify, protect or support LGBTI people affected by multiple discrimination.

### Legal Framework and State Policies

In general, the problem of multiple discrimination has not been widely recognized in the legal framework and state's policies.

However, the reference to the concept of a discrimination based on multiple grounds can be found in the Labor Code. First of all, the labor law states that it is forbidden to be discriminated against on the grounds of many different characteristics. Also, the Labor Code indirectly introduces this type of discrimination in art. 18<sup>3a</sup> par 3, stating that discrimination can occur on the grounds of one or several premises. As there is an open catalogue of discriminatory characteristics in the Labor Code, it is possible to identify cases with overlapping grounds of discrimination against an employee. Because of the way that Polish courts gather data, it is difficult to determine how many lawsuits demanding damages because of multiple discrimination in the workplace were filed<sup>326</sup>. Nevertheless, research conducted in 2013 proved that multiple discrimination on grounds of sexual orientation together with other characteristics (in most cases gender, low income, nationality, disability, age) exists in the workplace and in education<sup>327</sup>.

Despite repeated recommendations of members of the Coalition for Equal Opportunities in 2010<sup>328</sup>, no definition of multiple discrimination was added to the Equal Treatment Act although some

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<sup>326</sup> Marta Krawczyńska, 'Dyskryminacja wielokrotna na gruncie prawa pracy [Multiple discrimination in Labor Law]' in: *Dyskryminacja wielokrotna – analiza zjawiska w obszarze edukacji i zatrudnienia [Multiple discrimination in the field of education and employment]* – Magdalena Chustecka, ed. (Warsaw 2013), <https://rownosc.info/studies/post/dyskryminacja-wielokrotna-analiza-zjawiska-w-obsza>

<sup>327</sup> Compare chapters 4 (Olga Danek) and 5 (Marta Rutkowska) in *Dyskryminacja wielokrotna – analiza... [Multiple discrimination in the field...]*

<sup>328</sup> See:

[http://www.ptpa.org.pl/site/assets/files/1138/19\\_06\\_2010\\_stanowisko\\_koalicji.pdf](http://www.ptpa.org.pl/site/assets/files/1138/19_06_2010_stanowisko_koalicji.pdf), access: 27.07.2018

EU instruments contain such references.<sup>329</sup> The Equal Treatment Act introduces closed catalogue of grounds of discrimination: gender, race, ethnicity, nationality, religion, denomination, worldview, disability, age and sexual orientation. It does not explicitly forbid to take action to court based on discrimination because of more than one characteristics, which in practice means it should be regarded as possible. However, it must be pointed out that the Act specifies what discrimination characteristics are protected in each field. In the case of sexual orientation, it encompasses such spheres of life as training, running business, activities in unions (art. 8). Because of that, the importance of the Act for LGBTI persons is limited.

### Available Research on Multiple Discrimination and the Activities Aimed at Responding to this Problem

Multiple discrimination seems to be an issue raised only in the works of some NGO's and researchers, though there are relatively few research papers that cover the subject. In 2018 five NGOs<sup>330</sup> signed alternative submission to the UN Committee on the Rights of Persons with Disabilities (CRPD) about intersections between disabilities and sexual orientation, gender identity and sex characteristics<sup>331</sup>. In the report they pointed out several problems faced by persons because of their both real or perceived disability and sexual orientation, gender identity or intersex status in the area of access to healthcare, reparative therapies causing mental health conditions, independent living and community participation as well as bias – motivated violence and hate speech. They also provided detailed recommendations for the state.

Research conducted in 2012 by Przestrzeń Kobiet [Women's Space] Foundation 'Niewidoczne (dla) społeczności' [*Invisible (to the) communities*] was focused on problems and discrimination faced by lesbians and bisexual women in small towns and rural areas<sup>332</sup>. The results, which were based on almost 250 internet surveys (as well as 25 in-depth interviews and letters), revealed that around third of the

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<sup>329</sup> Act of 3 December of 2010 on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment [Pol.: Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania] (Journal of Laws No 254, item 1700).

<sup>330</sup> Association Strefa Venus of Milo, Association Lambda Warsaw, Culture of Equality Association, Autonomy Foundation, Campaign against Homophobia

<sup>331</sup> Alternative submission to the UN Committee on the Rights of Persons with Disabilities (CRPD), Agnieszka Król, Aneta Bilnicka, Marcin Rodzinka, Piotr Godzisz, Mirosława Makułowska, 'Intersections between disabilities and sexual orientation, gender identity and sex characteristics: The situation in Poland', [https://drive.google.com/open?id=1c01jPXQbUkVq\\_rsnPQDquUCcl8DArXMc](https://drive.google.com/open?id=1c01jPXQbUkVq_rsnPQDquUCcl8DArXMc)

<sup>332</sup> Justyna Struzik, ed., 'Niewidoczne (dla) społeczności. Sytuacja społeczna lesbijek i kobiet biseksualnych mieszkających na terenach wiejskich i w małych miastach w Polsce. Raport z badań' [*Invisible (to the) communities. Social situation of lesbians and bisexual women living in Polish rural areas and small cities. Research report*], (Cracow: Women's Space Foundation 2012)



participants of the research experienced discrimination on the grounds of both gender and sexual orientation. Less than 50 experienced multiple discrimination because of their sexual orientation and place of residence and because of sexual orientation and their financial situation. 16 of them were discriminated against with regard to all premises mentioned above. The results confirmed the prevalence of violence due to sexual orientation, which was reported by 66% of subjects. 74% of them had no one to turn to for help in difficult situations. Researchers underlined that lesbians and bisexual women were especially exposed to discrimination because of their gender but also by the way their gender is perceived in smaller towns and rural areas and the social expectations towards a woman in those communities. They conclude that main difficulties that are faced by non-heterosexual women living in these areas, are social and geographical isolation as well as invisibility of their problems and needs. The participants of this research felt that their situation cannot improve and that they were ignored by local communities and by LGBT organizations.

Another research by the same Foundation in 2015 'Spoza centrum widać więcej [Outside of the centre one can see more]' <sup>333</sup> was conducted in answer to problems raised in the report mentioned above. The participatory action research was aimed at, inter alia, working out "alternatives to the city-centered perspective in social activism as well as look[ing] for solutions to the problems of multiple discrimination faced by this group"<sup>334</sup>. The project was divided into two main stages. The first one was a number of focus groups with women falling into three categories: non-heterosexual women living outside of large cities, feminist and queer activists, and local social activists. The second stage comprised of workshops attended by some of the participants, that was supposed to come up with the solutions to three main problem areas, that were identified during focus groups: less access to culture and education among, worse access to resources aiding lesbians and bisexual women outside of larger cities and the dominant heteronormative perspective in the activism of LGBT organizations.

## Recommendations

- 3) Adding definition of multiple discrimination to the Equal Treatment Act.
- 4) Support initiatives and programs highlighting the special significance of anti-discrimination prevention in the case of

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<sup>333</sup> Justyna Struzik, ed., 'Spoza centrum widać więcej. Przeciwdziałanie dyskryminacji krzyżowej ze względu na płeć, orientację seksualną i miejsce zamieszkania. Raport z badań [Outside of the centre one can see more. Preventing cross-discrimination on the grounds of gender, sexual orientation and place of residence. Research report]

<sup>334</sup> Justyna Struzik 'Outside of the centre...', p. 234

overlapping grounds of discrimination, particularly where it concerns sexual orientation or gender identity.

## About the authors

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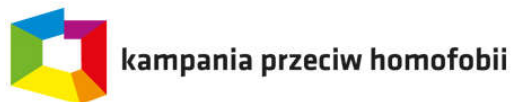
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## About the organizations

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**Lambda Warsaw** – Established in 1997. Mission: to create a space for constructing a positive identity of the LGBT community. Values: openness, respect, diversity and non-violence. Structure: managed by the Board (six people); about 20 contracted staff members (FTE about 10) and about 40 volunteers. Activities: direct service delivery (legal and mental health support); training (police, NGOs); monitoring & research, outreach & campaigning and advocacy in the areas: (1) Support; (2) Health; (3) Equal Treatment & Security; and (4) Culture.



**Campaign Against Homophobia** – Established in 2001. Mission: to act for the benefit of LGBT people through advocacy; to initiate changes resulting in equal rights; to create a civil society with the ability to self-organize. Values: human rights; equal treatment; diversity. Structure: managed by the Board (six people); 12 contracted staff members (FTE) and about 15 volunteers. Activities: outreach, campaigning and advocacy in the areas: (1) Safety, (2) Family, (3) Health (4) Education (5) Allies; service delivery (legal and psychological support); training; monitoring & research.

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