



DANISH INSTITUTE FOR
HUMAN RIGHTS

COWI

The social situation concerning homophobia and discrimination on grounds of sexual orientation in Poland

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A. A Summary of the Overall Situation of LGBT Persons

- [1]. Poland has received international attention in previous years following official bans, and attacks by right wing politic groups, against public LGBT events. In particular, Poland's previous government and the Catholic Church have been vocal against LGBT persons and their rights.
- [2]. The Employment Directive 2000/78/EC is in principle implemented into Polish law and provides victims of discrimination on the ground of sexual orientation with the possibility of seeking redress. However, there are no public institutions responsible for overseeing equality or anti-discrimination legislation and policies. However there is provision for the Ombudsman to be involved in any court proceedings (civil or criminal) and formulate legal opinions in discrimination cases. There is no official recognition of same-sex couples.
- [3]. Research shows that LGB persons in Poland, to a large extent, do not disclose their sexual orientation and are reluctant to report incidents of discrimination. Other research shows that 42 per cent of LGBT respondents state having experienced physical violence three or more times during 2005 and 2006. Education has also been the centre of public debate with public dissatisfaction being shown towards homosexual teachers and sex education in the school curriculum. About one fifth of LGBT respondents state having experienced verbal and psychological abuse in school or college.

B. The Collection of Data

- [4]. The material for this report is drawn from four different sources:
 - A legal country report carried out for this study and written by Andrzej Rzepliński.¹
 - A sociological country report carried out for this study reviewing available data on the situation concerning homophobia and discrimination on grounds of sexual orientation, written by Professor Ireneusz Krzeminski, University of Warsaw.²

¹ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

² I. Krzeminski (2008) *The situation concerning homophobia and discrimination on the grounds of sexual orientation in Poland*, Sociological Country Report.

- Data collected through an online questionnaire that was sent out to stakeholders in Poland.
 - Data collected through interviews conducted in Poland with the LGBT NGO *Kampania Przeciw Homofobii* [Campaign Against Homophobia] and the national Ombudsman.
- [5]. Sociological research into LGBT issues in Poland found that there is very little official data and little existing research. The data in this report is mainly based on: 1) the research project *The situation of LGBT persons in Poland in their own eyes* (2008), carried out by I. Krzeminski, M. Głowania and M. Jozko from Warsaw University; 2) research carried out by Ph.D. in Psychology candidate Marta Abramowicz (2007) entitled '*the Campaign Against Homophobia*'; and, 3) public survey data from *the Polish Public Opinion Research Centre*.

C. Key Findings

C.1. Attitudes Toward LGBT Persons

- [6]. Surveys examining acceptance and attitudes toward homosexuality were carried out across all EU Members States, both in 2006 and again in 2008.
- [7]. The 2008 *Eurobarometer* asked, 'How would you personally feel about having a homosexual (gay man or lesbian woman) as a neighbour?' (1 meaning 'very uncomfortable' and 10 meaning 'very comfortable'). The figure in Poland was 7.1. compared to the EU average of 7.9. Romania was the lowest with 4.8.³
- [8]. In answer to questions asked as part of the 2006 Eurobarometer survey, 42 per cent of EU citizens responded in agreement that same-sex marriages should be allowed throughout Europe. The figure was 17 per cent in Poland. The Netherlands scored the highest with 82 per cent and Romania the lowest with 11 per cent. With regard to adoption by same-sex couples, the level of acceptance decreased in the Member States (31%) including in Poland (7%). This figure of 7 per cent was, together with Malta the lowest score of any State in Europe. The Netherlands scored highest with 69 per cent.⁴
- [9]. According to research done in late 2006 by the *Campaign Against Homophobia* and *Lambda Warsaw*, LGBT persons in Poland generally feel that they are not accepted or respected by society.⁵ This

³ European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.

⁴ Eurobarometer 66 (2006), available at: http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf, pp. 43-46.

⁵ M. Abramowicz (ed.) (2007) *The Situation of Bisexual and Homosexual Persons in Poland; 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association.

explains why most LGBT persons are still ‘closeted’. A low visibility of LGBT persons ‘in daily life’ enforces stereotypical views of LGBT persons (for example the promiscuous gay man, as shown on TV), which further leads to homophobic behaviour and promulgates fear within LGBT people prohibiting them from ‘coming out’.⁶

- [10]. The situation for LGBT persons worsened so much so during the period of the previous government that Poland was specifically named in resolutions of the European Parliament concerning increases of homophobic violence in Europe.⁷ The Polish MEP’s that voted in favour of the resolution were later named and shamed in the Polish press and received several threats and/or offensive messages.⁸
- [11]. Between 2000 and 2007 the Ombudsman received 26 complaints concerning discrimination against LGBT persons. However, only ten cases qualified for further investigation. These cases raised issues of discrimination in organising public assemblies, discrimination in employment, a lack of respect for the human dignity of LGBT persons in public debates, discrimination in the course of law enforcement activities undertaken by the police as well as discrimination regarding voluntary blood donation.⁹
- [12]. On several occasions the Ombudsman has urged the authorities to improve legal protections for LGBT persons in Poland. These requests have been made as a result of complaints submitted to the Ombudsman and a consequence of having had meetings with representatives of LGBT NGOs.¹⁰

C.2. Criminal Law - Hate Crime

- [13]. Hate speech towards homosexuals is a problem in Polish political and social life. Polish criminal law does not contain specific instruments that provide protection against hate speech directed at homosexuals.¹¹
- [14]. The research done by the Campaign Against Homophobia and Lambda Warsaw shows that 17.6 per cent of the LGBT respondents had experienced physical violence in the period January 2005 to late 2006. Of these respondents, almost 42 per cent had experienced physical violence three or more times within the researched period. The perpetrators were mostly unknown to the victims, but in other

⁶ Field trip meeting with *Campaign Against Homophobia* (Poland, 17 March, 2008).

⁷ Field trip meeting with *Campaign Against Homophobia* (Poland, 17 March, 2008).

⁸ See M. Abramovicz (ed.) (2007) *The Situation of Bisexual and Homosexual Persons in Poland 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw.

⁹ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

¹⁰ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

¹¹ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

cases close friends, family members and/or classmates were also reported to be the perpetrators.¹²

- [15]. Psychological violence (e.g. name calling, intimidation, ridiculing, humiliating) had been experienced by more than half of the respondents, most of whom have several such experiences.¹³
- [16]. Furthermore, the same research also showed that persons with higher education are more open about their sexual orientation, and are thus more likely to be exposed to assaults. Similarly, LGBT youth report more frequent assaults than average, particularly from family members.¹⁴
- [17]. The research done by NGOs shows that over 80 per cent incidents involving physical violence are not reported to the police, which can be explained by a very low level of confidence in these authorities. Some respondents even reported being offended, ridiculed and humiliated by the police.¹⁵ Also, since regulations regarding data protection do not provide full protection, LGBT persons fear that their sensitive data will be collected by other investigative bodies or might be used by unauthorised third parties.¹⁶
- [18]. Another problem is a neo-fascist website, *Redwatch*, which includes data on many left-wing activists and members of NGOs, including LGBT NGOs, together with personal data. *Redwatch* has been known to incite violence against the groups and individuals they keep data on. Despite efforts by the police, the website is still operational and constitutes a continual danger for persons whose names are listed on it.¹⁷

C.3. Freedom of Assembly

- [19]. In recent years the organisation of public LGBT events has been met with significant problems.. In 2005, prides were prohibited by the authorities because of traffic regulations. However, administrative attempts to restrict the freedom of assembly have resulted in successful court challenges (in the Polish Constitutional Court, as

¹² M. Abramovicz (ed.) *The Situation of Bisexual and Homosexual Persons in Poland 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw 2007.

¹³ M. Abramovicz (ed.) *The Situation of Bisexual and Homosexual Persons in Poland 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw 2007.

¹⁴ I. Krzeminski (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Poland*, Sociological Country Report.

¹⁵ Marta Abramovicz (ed.) *The Situation of Bisexual and Homosexual Persons in Poland 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw 2007.

¹⁶ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

¹⁷ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

well as of the European Court of Human Rights) that have served to strengthen the existence of this freedom in Poland.¹⁸

- [20]. Nevertheless, the risk of violence and offensive language from counter-demonstrators remains whenever LGBT events are organised. Events in Kraków in 2006 and 2007 show that the police are not always effective in exercising their duty to protect participants of legal demonstrations from aggressive counter-demonstrators. Overall, the organisation of assemblies by the LGBT community is a matter of great controversy.¹⁹ According to a 2005 survey, 78 per cent of the population are of the opinion that LGBT organisations should not have the right to hold public events.²⁰
- [21]. There are also similar problems concerning the Freedom of Association. Normally, NGO's receive financial support from the authorities to rent out an office, but the *Campaign Against Homophobia* has been refused such rental support. They have experienced other difficulties in getting funding as well.²¹ In Parliament in 2006 the Minister for Education stated that there "will be no more money spent on the organisation [...] *Campaign Against Homophobia*".²² The refusal of funding has been the subject of a court case that is still pending.²³

C.4. Family and Other Social Issues

- [22]. In 2003 a draft law on same-sex partnerships was prepared by the Senate. However, the current government does not appear interested in putting this issue onto the political agenda.²⁴ Same-sex partnerships are not legally recognised and same-sex couples face discrimination in health services, access to public housing, inheritance issues etc. Furthermore, same-sex couples are prohibited from adopting.
- [23]. Surveys show that a growing number of persons accepts the possibility of legal unions for same-sex couples. In the period 2001-2005 the number increased from 34 to 62 per cent.²⁵

¹⁸ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

¹⁹ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

²⁰ I. Krzeminski (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Poland*, Sociological Country Report.

²¹ Field trip meeting with *Campaign Against Homophobia* (Poland, 17 March 2008).

²² M. Abramovicz (ed.) *The Situation of Bisexual and Homosexual Persons in Poland; 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw 2007.

²³ Field trip meeting with the *Ombudsman* (Poland 18 March 2008).

²⁴ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

²⁵ I. Krzeminski (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Poland*, Sociological Country Report.

C.5. The Labour Market

- [24]. Despite the EU Employment Directive operating in Poland there have been very few cases before Polish employment courts where the claim of sexual orientation was raised. This should be seen in the light of a fear by LGBT persons about disclosing their sexual orientation.²⁶ This is supported by research done by *Campaign Against Homophobia* and *Lambda Warsaw*, referred to above, showing that a vast majority of LGB respondents conceal their sexual orientation in the workplace.²⁷
- [25]. There is only a small amount of data available that details discrimination in the workplace. A low level of awareness of discrimination prevents it from being recognised in the Polish workforce. Besides, unequal treatment can be difficult to prove. Moreover, because of a fairly high unemployment rate, employees are afraid that reporting discrimination will lead to them losing their jobs.²⁸

C.6. Education

- [26]. The previous government actively used homosexuals and attitudes towards them as part of their ideological agenda, especially in the field of education.²⁹
- [27]. Mirosław Sielatycki, Director of the Teacher Training Centre (NTTC) was dismissed by the Minister of Education for publishing the official Council of Europe guide for teachers, *Compass – Education on Human Rights*. In the opinion of the Minister of Education, this guide included statements which could be regarded as a promotion of homosexuality. Mirosław Sielatycki, with the support of the Ombudsman, decided to appeal to the District Court in Warsaw for unfair dismissal and discriminatory treatment in employment on the grounds of his political opinions. The District Court in Warsaw found in Mr Sielatycki's favour and decided to award him approximately 20,000 PLN (5,700 Euro) in damages. This amount was the maximum sum claimed by Mirosław Sielatycki, Hence, to some degree, this outcome reveals how important the court felt this discrimination case was.³⁰
- [28]. The previous government also stopped all education programmes dealing with sexuality, and there is no sexual education component in

²⁶ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

²⁷ M. Abramowicz (ed.) (2007) *The Situation of Bisexual and Homosexual Persons in Poland 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw.

²⁸ Field trip meeting with *Campaign Against Homophobia*, March 17 2008.

²⁹ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

³⁰ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

the education curriculum.³¹ There is very little time in the curriculum dedicated to ‘preparation for family life’. Furthermore, this opportunity only focuses on heterosexual ‘traditional’ families. Teachers are very reluctant to talk about homosexuality for fear of losing their jobs.³² The previous government even proposed a bill against ‘homosexual propaganda’ in schools, which did not pass through parliament.³³

- [29]. Research done in late 2006 by *Campaign Against Homophobia* and *Lambda Warsaw* revealed that almost 80 per cent of LGBT students (partially) hide their sexual orientation at school/university.³⁴ The research also shows that of those respondents that had experienced physical violence, around 25 per cent had experienced this at school. In about 30 per cent of the cases the perpetrators were reported to be classmates.³⁵
- [30]. According to other research 11 per cent of LGB male pupils/students have experienced physical abuse at school or college. Regarding verbal and psychological abuse the figures are 23 per cent for men and 19 per cent for women.³⁶
- [31]. This same survey showed that about three quarters of the population disagree that gays and lesbians should be allowed to be teachers.³⁷

C.7. Health Service

- [32]. LGBT persons also face discrimination within the health service. For example, gay men are not allowed to donate blood. Furthermore, same-sex partners are not always allowed to visit each other in hospitals and vital information about one partner’s health is not disclosed to the other partner.³⁸

³¹ I. Krzeminski (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Poland*, Sociological Country Report.

³² Field trip meeting with *Campaign Against Homophobia* (Poland, 17 March 2008).

³³ Field trip meeting with *Campaign Against Homophobia* (Poland, 17 March 2008).

³⁴ M. Abramovicz (ed.) (2007) *The Situation of Bisexual and Homosexual Persons in Poland; 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw.

³⁵ M. Abramovicz (ed.) (2007) *The Situation of Bisexual and Homosexual Persons in Poland; 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw.

³⁶ I. Krzeminski (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Poland*, Sociological Country Report.

³⁷ I. Krzeminski (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Poland*, Sociological Country Report.

³⁸ M. Abramovicz (ed.) (2007) *The Situation of Bisexual and Homosexual Persons in Poland; 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw. And: I. Krzeminski (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Poland*, Sociological Country Report.

C.8. Religion

- [33]. Ninety five per cent of the Polish population are catholic. The Catholic Church has considerable cultural and political influence and actively takes part in the public debate regarding LGBT issues. Their stance is very much against granting LGBT persons equal rights.³⁹ The Church heavily emphasizes the importance of ‘traditional family’, (i.e. heterosexual married couples and parents), and argues fervently against anything that differs from this concept.⁴⁰
- [34]. There are numerous incidents where Church officials have expressed homophobic hate speech. Homosexuals, particularly gay men, are frequently the subjected to hate speech by the Church. For example, homosexuality has been called a disease, and/or a disorder, which needs to be cured and that homosexual persons need to be isolated from society. Similarly, it has been argued that homosexuality is in opposition to the "European civilization". Homosexual men are also banned from catholic seminars, because ‘the Church does not need such educators’.⁴¹ Campaigns aimed at promoting equal treatment and equal rights for LGBT persons are said to ‘promote homosexuality’ and are thus believed to ‘corrupt’ persons into becoming gay.

C.9. Sports

- [35]. There is very little data available on this issue. *The Campaign Against Homophobia* describes the presence of homosexual persons in sports as taboo.⁴²

C.10. Media

- [36]. There are some influential catholic media outlets (TV and radio stations, as well as newspapers) that are openly homophobic, and present homosexuality as an illness and a sin.⁴³ Otherwise, *the Campaign Against Homophobia* has good contacts with some of the media, and there are some media that present a neutral picture of LGBT persons/issues.⁴⁴

³⁹ I. Krzeminski (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Poland*, Sociological Country Report.

⁴⁰ Field trip meeting with *Campaign Against Homophobia* (Poland, 17 March 2008).

⁴¹ M. Abramowicz (ed.) (2007) *The Situation of Bisexual and Homosexual Persons in Poland; 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association,

⁴² M. Abramowicz (ed.) (2007) *The Situation of Bisexual and Homosexual Persons in Poland; 2005 and 2006 report*, Campaign Against Homophobia and Lambda Warsaw Association, Warsaw.

⁴³ I. Krzeminski (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Poland*, Sociological Country Report.

⁴⁴ Field trip meeting with *Campaign Against Homophobia* (Poland, 17 March 2008).

C.11. Asylum and Subsidiary Protection

- [37]. In general there is a lack of data or concerning the sexual orientation of aliens or refugees and whether or not such information is taken into account when considering applications for asylum or refugee status.⁴⁵
- [38]. However, there has been one case where refugee status was granted to a Chechen national due to problems with gender identification and intimidation in the home country. There was another case of a gay man from Moldova which is now the subject of appeal before *Rada do spraw Uchodźców* [Council for Refugees].⁴⁶

C.12. Family Reunification

- [39]. Only persons belonging to the narrowly defined category of family members (spouses, immediate descendants or ascendants) of EU citizens can freely enjoy the benefits deriving from the right to move and reside freely within the EU. This includes same-sex spouses (those who are legally married under the laws of another EU State), but excludes other partners (for example those in a registered partnership).⁴⁷
- [40]. Third-country nationals, who are not covered by EU law, are subject to a more narrow definition of ‘marriage’ which excludes same-sex marriages.⁴⁸
- [41]. Polish nationals wishing to enter into a same-sex partnership or marriage abroad face problems in getting a certificate from the Polish civil status authorities stating that they are not already married. An official instruction of the Ministry of the Interior states that such certificates may only be issued to persons who wish to enter heterosexual marriage. This problem may in practice be resolved by obtaining a notary certificate.⁴⁹
- [42]. Polish citizens that have entered into registered partnerships abroad will be treated as single/unmarried under Polish law upon return since same-sex partnership is not recognised in Poland.

⁴⁵ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

⁴⁶ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

⁴⁷ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

⁴⁸ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

⁴⁹ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

C.13. Transgender Issues

- [43]. Discrimination of transgender persons is treated as discrimination on the basis of sex. In a judgment of 1978, the Supreme Court accepted that it is not only external physical features and organs which define an individual's sex, but also a person's emotional association with the gender opposite to that assigned at birth. The Court found that no one could be forced to be a man (or woman) if s/he internally denies it.⁵⁰
- [44]. However, this judgement was followed by several other judgments which created uncertainty regarding the procedures to be followed for officially changing one's sex. There is a great need for comprehensive legislation establishing the rights of transsexuals in the health service, as well as regulating the procedure for name changes and acts of civil status.⁵¹ Currently there are varying kinds of procedure in place, and sex reassignment surgery is not covered by public health insurance.⁵²
- [45]. There is one publicly known transgender person in Poland who is increasing the otherwise very limited visibility of this section of society.⁵³

C.14. Multiple discrimination

- [46]. There is no data available concerning multiple discrimination.

D. Good Practice

- [47]. No good practices have been identified in Poland

⁵⁰ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

⁵¹ A Rzepliński (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Poland*, FRALEX.

⁵² Field trip meeting with *Campaign Against Homophobia* (Poland 17 March 2008).

⁵³ Field trip meeting with *Campaign Against Homophobia* (Poland 17 March 2008).