Report

on 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

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The opinions expressed in document do not necessarily reflect official positions of ILGA-Europe.

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I. Executive summary

The Polish Government has not taken sufficient efforts to implement the Recommendations. Since they are not a legally binding international obligation there has been little attention paid to it by decision makers. A draft translation has been made of the Recommendations and Memorandum text and it has been made available to a limited number of state actors.

According to provisions of newly implemented Antidiscrimination Bill (January 2011) two Equality Bodies have been appointed – a governmental (Plenipotentiary for Equal Treatment - PRT) and an independent one (the Ombudsman - RPO). Both of them see the need to address certain LGBT issues, but no complex strategy has been adopted. In 2013 a National Action Plan will be presented by the PRT. The initial part of the preparations of the Action Plan included consultations with civil society representatives – among others LGBT activists. It is still not certain how this will transpose to the final Action Plan.

The only sphere of the law in which LGB persons’ rights are protected according to the international standards is the field of employment. The Labor Code and other relevant Bills explicitly mention sexual orientation as a possible discrimination ground and provide for shifted burden of evidence and procedures to seek redress for damages in case of discrimination.

The provisions of the Criminal Code do not include homo- and transphobic motivation of hate crimes. It is therefore impossible to collect credible statistical data on that matter. The level of homo- and transphobia in the society is still high, and discriminatory statements are made by politicians and celebrities. Homo- and transphobic crimes are a burning issue, especially as most of them are not even reported to the police for fear of secondary victimization. General police training includes some LGBT issues although there is no overall policy to make law enforcement procedures LGBT non-oppressive.

Freedom of association and freedom of assembly of LGBT persons is protected. Although there still are incidents of homo- and transphobic attacks on pride events. Participants and perpetrators in most cases go unidentified.

In the scope of family life – debate is in progress on civil partnership legislation. The outcomes are uncertain, since to date there was no real political will to adopt such provisions.

There appears to be recognition by Poland of the fact that well-founded fear of persecution based on sexual orientation and gender identity is a valid ground for granting refugee status. There is however no understanding of LGBT asylum seeker situation, which often results in not granting refugee status to persons who cannot provide evidence of their sexual orientation or gender identity. Very often the situation in country of origin is misjudged by the officials who do not seek information e.g. from expert NGOs who might provide it.

However there are many areas of life where adequate account of the needs of LGBT people is still not taken. That includes education, housing, healthcare and sports. That leads to common
mistreatment of LGBT pupils and students, patients, tenants and athletes. The main concern of LGBT organizations is the situation in learning facilities. The school does not provide a safe space for students’ individual development, and the content of teaching materials is not free of prejudice and hatred.

The situation of transgender persons is a legal limbo. There is no gender recognition act, and changing a legal gender requires lengthy and humiliating medical and court proceedings. The gender reassignment treatment is not refunded by the state, and people undergoing transition are more than others vulnerable to discrimination and violence, among others in the workplace.

Overall, however the topic of LGBT issues is to some extent present in the political debate and there is some progress being made in terms of mainstreaming LGBT rights, it is still not systematic and it is not aimed at sustainable change.
II. Recommendations to the Polish government for priority actions towards implementation of the CMCE Recommendation adopted by the Council of LGBT Organizations of Poland

Main

1. Including gender identity as a legally protected ground in all spheres of law referred to in Recommendations.

2. Introducing gender reassignment regulation to the national law, which shall be consistent with human rights standards, particularly with the Yogyakarta Principles.

3. Including sexual orientation as a ground protected by the law in areas covered by the Recommendations where it has not been taken into account previously.

4. Conducting an in depth review of the law and regulations, including local laws and internal regulations, and their practice to eliminate discrimination based on sexual orientation or gender identity.

5. Extending the statutory competence for the Ombudsman and the Government Plenipotentiary for Equal Treatment in order to allow issuance of administrative decisions granting compensation and redress for the persons discriminated on the basis of sexual orientation or gender identity.

6. Guaranteeing equal treatment bodies competence to intervene in matters concerning violations of the principle of equal treatment committed by citizens.


8. Ensuring the highest level of protection against discrimination based on sexual orientation provided in the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment, e.g. in terms of access to goods and services, health care, social security and education.

9. Introducing the concept of multiple discrimination, discrimination by association, discrimination by assumption as well as amending an incorrect definition of direct discrimination in the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment and employment laws.


11. Ensuring that the developing National Programme for Equal Treatment takes into account the real needs of people who are at risk of discrimination based on sexual orientation and gender identity, by the means of:

   a. conducting educational activities,
b. increasing public awareness,
c. promoting acceptance in society.

12. Creating easily accessible information system for people at risk of discrimination on the grounds of sexual orientation and gender identity regarding the existing means of legal protection and access to them.

13. Introducing easily accessible (telephone and Internet) anonymous reporting system for the incidents motivated by homo- and transphobia accessible to the victims and third parties aiming at data collection.

14. Preparing an official translation of the Recommendations CM/Rec(2010)5 and their distribution in the national institutions of authority and among people at risk of discrimination based on sexual orientation and gender identity, with particular regard to:

   - LGBT society,
   - Public administration,
   - Law enforcement, the judiciary and the penitentiary institutions,
   - National human rights structures (including the equality bodies),
   - The education system,
   - The health care system,
   - Representatives of employees and employers in the public and private sector,
   - Media,
   - Non-governmental organizations.


   Detailed
   (Based on the Appendix III)

i. Right to Life, Security and Protection from Violence

   a. “Hate crimes” and other incidents based on hatred
   b. “Hate speech”

1. Introduction of the legislation to the national criminal regulations which would penalize hate speech and hate crimes based on sexual orientation and gender identity to the Act of 6 June 1997 of the Penal Code.

2. Recognition in national criminal law of hate crimes based on sexual orientation, gender identity as a crime committed with motivation deserving special condemnation.

3. Introduction of cyclic evaluation of training in the field of anti-discrimination conducted for police officers, public security services and employees of public administration, where elements of discrimination are included, as well as introduction of trainings and evaluations system concerning equal treatment regardless of sexual orientation and gender identity, where it is still not introduced as a mandatory part of training.

4. Introducing a system to recognize homo- and transphobic motives of a crime by officers and use it for the purposes of data collection.
5. Creating and promoting a definition of hate speech and hate crime including crimes with homo- and transphobic motive by government and equality bodies.

6. Introducing training of judges, prosecutors, bailiffs, probation officers, mediators and court experts in basic knowledge of sexual orientation and gender identity in the context of international human rights standards.

7. Developing methods and implementation of systems that prevent secondary victimization of victims, witnesses and suspects/defendants and their families on the grounds of their sexual orientation and gender identity for investigative services, law enforcement and administration of penitentiary system.

8. Introducing of sexual orientation and gender identity as a protected ground to the internal legal acts regulating the activity of public officers, including public security officers.

9. Including the specific needs and obstacles faced by victims of homophobia and/or transphobia in the National Programme for Victims of Crime.

ii. Freedom of Association

iii. Freedom of Expression and Peaceful Assembly

1. Introduction of regulations 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 in the development and implementation of public policies at local and national levels as partners.

2. Introducing commonly accepted practice of an obligation to consult on draft bills, other documents and actions concerning equal treatment, including National Programs run by Plenipotentiary for Equal Treatment and the Ombudsperson and other public institutions with NGOs working for advancing LGBT rights. Guaranteeing that those documents and plans of action are accessible for consultation as well as drafting by the relevant NGOs.

3. Introducing an equality strategy for people at risk of discrimination on the grounds of sexual orientation and gender identity to the priority activities of public institutions at central and local levels, especially those which relate to areas of the Recommendations.

4. Ensuring that local authorities adopt relevant local programs of cooperation with non-governmental organizations to intensify actions against social exclusion and discrimination based on sexual orientation and gender identity.

5. Strengthening the role played by the experts in the field of sexual orientation and gender identity in process of consulting NGO’s proposals for actions and events in order to ensure an adequate level of knowledge and competence in the decision-making process.

6. Encouraging local authorities to promote the work of organizations working for the benefit of people at risk of discrimination based on sexual orientation and gender identity.

7. Introducing regulations, mechanisms and tools to aid in protection of Polish LGBT rights defenders in the third countries.
8. Granting competences to the national equality bodies and allocation of additional financial resources in order to oblige them to undertake proactive action in changing the current situation of people at risk of discrimination based on sexual orientation and gender identity.

9. Introducing in the mission statements of public media commitment to the principle of promoting attitudes of acceptance of people at risk of discrimination based on sexual orientation and gender identity.

10. Improving the system of implementation of rulings of the European Court of Human Rights, including the Baczkowski and Others v. Poland (complaint no. 15430/06).

iv. Right for Respect of Personal and Family life

1. Introducing laws regulating the relationships between persons of the same sex that will equalize their rights with the rights of the spouses (inclusive of transgender persons).

2. Amendment to the Regulation of the Minister of Internal Affairs and Administration of 26 October 1998 laying down detailed rules for drafting marital status, method of keeping the status acts, control, storage and security, and design of civil status acts, their copies, certificates and protocols in such a way that it is possible to obtain a possibility to enter civil partnership abroad without disclosing partner’s personal data.

3. Ensuring, through appropriate amendment to the laws or unification of their interpretation, that in all cases where the statute uses the term 'next of kin', 'significant other' or 'persons remaining in cohabitation' this includes the partners, regardless of their gender, sexual orientation or gender identity.

4. In matters of parental rights, custody and adoption introducing appropriate regulations or guidelines to indicate explicitly that the sexual orientation or gender identity of a parent have no impact on the welfare of the child.

5. Introducing regulations concerning reproductive rights, including the cases of assisted reproductive technology, ensuring access to such services, regardless of client’s sexual orientation or gender identity.

v. Right for Respect of Personal and Family life – Specific transgender issues

1. Change in the Act of 18 October 2006 on the disclosure of information on documents of national security in the years 1944-1990 and the contents of these documents as well as the Act of 18 December 1998 of the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation to allow the removal of data that may threaten the private life of people exposed to discrimination based on one's gender identity.

2. Change in the Act of 29 September 1986 - Law on civil status, by allowing gender reassignment in the form of rectification of civil status, instead of the current procedure.

3. Introduction of a comprehensive law on gender assignment, legally allowing people to recognize gender identity. The 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,
- Elimination of pathologization of transgender persons for the sake of the professional counselling in the process of transition,
- Change the gender reassignment process from the judicial to administrative or non-judicial inquiries,
- Abolition of the practice of forced divorce as a pre-requisite for gender reassignment,
- Guarantee the possibility of changing the identification cards of people wishing to correct their legal gender, without the necessity to undergo any medical intervention.
- Prohibit "Corrective and normalising treatments" on the genitalia of infants, as well as of children and teenagers below eighteen, unless the correction stems from the person's own decision and not from one's parents' (or guardians').
- Ensure the possibility to start the gender reassignment process for people before they become legal adults, including ensuring medical assistance appropriate to their age.

4. Amendment of the Act of 17 October 2008 regulating first and last name change to eliminate the custom of giving names culturally associated with the masculinity or femininity, or allow any person to change the name associated with the opposite gender (as well as gender neutral) in order to ensure respect for one's gender identity.

5. Introducing a statutory obligation for employers and other entities authorised to issue documents/certificates of professional competence to make changes to such documents in respect of the gender marker of a person who has completed gender reassignment.

vi. Employment

1. Broadening the catalogue of the protected grounds in the existing labour laws by adding the gender identity as a condition to the Act of 26 June 1974 on the Labour Code, the Act of 20 April 2004 on employment promotion and labour market institutions and the Act of 3 December 2010 the implementation of certain EU rules on equal treatment.

2. Intensifying actions by developing prevention strategies and programs in order to promote measures to combat discrimination in employment based on sexual orientation and gender identity.


4. Creating the system of anonymous complaints against employers in cases of discrimination or harassment because of sexual orientation or gender identity at the same time allowing efficient data collection about the scale of the phenomenon and its characteristics within the National Labour Inspectorate.

5. Granting the National Labour Inspectorate with the competence and responsibilities to monitor and respond to violations of the rights of persons employed as trainees and interns or on the basis of civil law contracts.

6. Providing training for the National Labour Inspectorate, labour courts and labour market institutions in terms of counteracting discrimination in employment.

7. Abolishing of discriminatory regulations prohibiting transgender and intersex people to serve in the military.
8. Establishing of national and local promotion programs in order to assist in finding employment for people at risk of discrimination based on gender identity.

9. Allow entities to apply for European Social Fund funding for the projects in the field of equal treatment also on the basis of sexual orientation, gender expression and gender identity.

vii. Education

1. Introducing the rules designed to ensure safety and equal treatment at all stages of education for the people at risk of discrimination based on gender identity.

2. Introducing the training of the teaching staff of issues related to appropriate treatment of students who may be at risk of discrimination based on sexual orientation and gender identity. Training should include:
   - the topic of respect for diversity, equality, human rights and anti-discrimination legislation,
   - the subject of homophobic and transphobic discrimination, bullying and sexual harassment, in order to form an appropriate reaction to this type of incidents.

3. Encouraging educational facilities to promote attitudes of acceptance by announcing competitions for the most interesting initiatives to raise awareness of homophobia and transphobia in education.

4. Revising the curriculum of the 'Education for family life' class in order to remove homophobic and transphobic content, and the content that forms stereotypes on gender roles and human sexuality as well as withdrawing from circulation the textbooks that do not meet the criterion of compliance with international human rights standards.

5. Introduction of transgender issues in accordance with international human rights standards and free from prejudice, to the curriculum of the 'Education for family life' class as a supplement to the current operating range for the content regarding gender identity.

6. Ensuring through appropriate provisions in the curriculum that the issue of gender and sexual diversity, described without stereotyping and prejudice, placing LGBT issues in the context of the overall protection of human rights, which will appear in the curriculum of the subjects such as Biology, History, Civic Education and Polish.

7. Preparing the experts who write opinions on textbooks within the scope of recognizing discriminatory content to include the grounds of sexual orientation and gender identity.

8. Creating a system of solutions, in particular through the introduction of appropriate regulations and best practices that would help transgender students in school life. Described above should include:
   - Easy and timely change of personal data in school documents, including for those who have not undergone gender reassignment procedures,
   - Allow a free expression of the gender identity within the institution without a sense of risk and exposure to discrimination, bullying and sexual harassment,
   - Provide equal access to all forms of school activities for all.

9. Ensuring that persons studying for a university degree to prepare them for teaching children and young people receive reliable information about sexual orientation and gender identity, in line with the standards of current medical knowledge and human rights.
10. Review the educational materials currently included in teachers’ training with a view to removing discriminatory content, especially pertaining to discrimination on the grounds of sexual orientation and gender.

11. Create the opportunity for all interested administrators, teachers, overseers, superintendents and other school authorities to receive anti-discrimination and equality training programmes and workshops.

12. Conduct constant monitoring and performance evaluations with regard to introducing antidiscrimination and equality education in the training offered to teachers and other people connected with the educational system, including management staff.

viii. Healthcare

1. Introducing, in the form of statutory provisions, prohibition of discrimination on grounds of sexual orientation and gender identity in access to health services and medical care.

2. Taking into account the specific needs of health care resulting from sexual orientation and gender identity in:
   - National health strategies,
   - Public health research,
   - Suicide prevention programs,
   - The curricula of future doctors,
   - Courses and training,
   - Mechanisms for monitoring and controlling the quality of medical services.

3. Ensuring that LGBT people have access psychological services tailored to their specific needs conducted by competent professionals.

4. Extending issues of sexual orientation and gender identity (and ensure its compliance with the latest standards of knowledge) in training for health professionals to create awareness and sensitization on the need to ensure the highest possible level of healthcare, while respecting LGBT patients.

5. Proper implementation of the regulations of the Ministry of Health regarding the requirements for donating blood by the National Blood Donation Centre and Regional Centres of Blood Donation and Treatment (RCKiK), in terms of the criteria governing the disqualification of blood donors applied by the RCKiK’s being compatible with the content of the regulations.

6. Ensuring the availability of programs and services, education, prevention, care and treatment in the field of sexual and reproductive health for people with special needs due to their sexual orientation and gender identity.

7. Encouraging health professionals and social workers to provide an environment which is open to young people with special needs due to their sexual orientation and gender identity.

8. Guaranteeing the status of "next of kin" to the same-sex partner of patient, according to the letter of the law, especially in cases where the patient is unconscious.
9. Granting transgender persons free access to the medical services associated with the one’s metrical or physical sex.

10. Amending normative acts, curricula of healthcare professionals by withdrawal of medical textbooks that treat homosexuality as a disease or disorder, in order to ensure the highest level of knowledge of health professionals on sexual orientation and gender identity.

11. Providing transgender persons who wish to undergo gender reassignment treatment with effective access to the necessary medical services (including psychological counselling, endocrinologist’s diagnosis, assistance and surgery).

12. Closing any facilities and centres offering a conversion therapy as a legitimate therapeutic method for transgender individuals, homo- or bisexuals.

13. Formulating a clear position on the ineffectiveness and dangers of conversion therapy by the Ministry of Health.

14. Placing a complete ban on surgical intervention in intersex children's bodies in the so-called body-normalization.

15. Restoring full refund of medical procedures associated with gender reassignment surgery as well as for hormonal therapies and blockers which are necessary during and after biological gender correction.

16. Adopting the Regulations on Social Workers that would include content pertaining to the current medical and psychological knowledge on the sexual orientations, gender identities, social functioning and specific needs and barriers of LGB persons in the curriculum.

17. Adopt the Regulations on the Psychologist’s Profession that would include content pertaining to the current medical and psychological knowledge on the sexual orientations, gender identities, social functioning and specific needs and obstacles faced by the LGBT persons in the curriculum.

ix. Housing

1. The adoption of legislation prohibiting discrimination based on sexual orientation and gender identity in areas such as:
   - Sale and rental of real estate,
   - Providing loans for the purchase of real estate,
   - Recognition of the rights of same-sex tenants in municipal housing,
   - Eviction.

2. Supplementing the Law of 21 June 2001 on the protection of the rights of tenants, municipal housing and change the Civil Code, the Act of 23 April 1964, the Civil Code and the Act of 12 March 2004 on social assistance with the appropriate provisions referring to the rights of people at risk of discrimination based on sexual orientation and gender identity.

3. Promoting awareness among institutions and charitable organizations in dealing with homelessness, openness and acceptance for people at risk of discrimination based on sexual orientation and gender identity.
4. 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.

5. 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.

**x. Sport**

1. Imposition of the statutory duty to act against homophobia and transphobia on the Ministry of Sport and Tourism and those organizations subjected to it.

2. Introduction of a system of monitoring homophobic and transphobic violence on the stadiums.

3. Supplementing resolutions and regulations of the sports associations’ present sanctions against discrimination based on sexual orientation and gender identity.

4. Ensuring, through appropriate legislation, proactive activities of the Ministry of Sport and Tourism in order to change the current situation of transgender people in sport and sports competitions, especially on the issues that regard:
   - End of discrimination against transgender people in sport and sports competitions,
   - Removing obstacles that transgender people face by participating in sports (i.e. the issue of access to the dressing room),
   - Recognition of a preferred gender for transgender people.

**xi. The right to seek asylum**

1. Introduction of practice that statements and experience of foreigners regarding persecution in their country of origin because of their sexual orientation or gender identity be considered sufficient evidence in the case, while stopping requirements for foreigners to prove their sexual orientation or identity through medical diagnosis.

2. Using the knowledge and experience of the organizations that are recognized authorities in the activities of the human rights of LGBT refugees and to determine the real situation of LGBT people in the country of origin of the foreigner.

3. Creating a training program and training courses in the field of the specific problems of those oppressed because of sexual orientation and gender identity for the employees / workers of refugee centres, officials involved in the processing of requests of people seeking refugee status or refugee, immigration centres staff, police, border guards, medical personnel and non-governmental organizations working with immigration centres.

**xii. National Human Rights institutions**

1. Conducting an in depth review of the law and regulations, including local laws and internal regulations, and their practice to eliminate discrimination based on sexual orientation or gender identity.

2. Creating easily accessible information system for people at risk of discrimination on the grounds of sexual orientation and gender identity regarding the existing means of legal protection and access to them.
xiii. Discrimination based on multiple grounds


2. Ensuring the highest level of protection against discrimination based on sexual orientation provided in the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment, e.g. in terms of access to goods and services, health care, social security and education.

3. Support initiatives and programs highlighting the special significance of anti-discrimination prevention in the case of overlapping grounds of discrimination, particularly the condition of the premises gender sexual orientation or gender identity.
III. Introduction

Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was a historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland has said, the world’s first international legal instrument dealing specifically with discrimination on these grounds, which he described as "one of the most long-lasting and difficult forms of discrimination to combat".

In broad terms the Recommendation does three things:
- It emphasizes the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognizes that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed upon unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

The purpose of this report

The purpose of this report is to assess what progress has been made by the Polish authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not, been completed, it provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

1 “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons” https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE
The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation. And secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

Methodology

The report’s assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which Campaign Against Homophobia (hereinafter: KPH) has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix III to this report, entitled “the Compliance Documentation Report”.

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries to letters from KPH listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures.
- Information from published sources, such as the reports on Poland commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, "Discrimination on grounds of sexual orientation and gender identity in Europe".
- Research and documentation assembled by KPH and other non-governmental organizations.
- Information available through Polish mass media and Internet.
IV. Findings


The operative text of the Recommendation includes four main requirements: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

Overall situation

The general prohibition of discrimination is recognized in article 32 of the RP Constitution 2. The list of characteristics protected under its regulations is non-exhaustive, therefore it should be interpreted in a way that encompasses both sexual orientation and gender identity. The only legislation that literally prohibits discrimination based on sexual orientation apply in the field of employment. 3 In other areas identified in the present Recommendation, LGB persons are not specifically protected against discrimination based on sexual orientation. Gender identity does not appear as a possible ground for discrimination in any legislative act. Legal academics point out that discrimination based on transsexuality or gender reassignment can be seen as discrimination based on gender in the light of Directive 2006/54/WE 4 and established jurisprudence of European courts. However this has not been reaffirmed by the jurisprudence.

A strategy which would take into consideration long-term education and awareness raising programs on equal treatment of LGBT persons has not been implemented. The first state actions to prepare a National Program on Combating Discrimination, which will include LGBT persons is under construction, and it is still too early to assess its final shape and possible effectiveness.

Current systems of data collection and data analysis applied in various ministries do not include data on discrimination against LGBT persons. The above is a consequence of lack of legal regulations, which would include the obligation to register such information. Research reports carried out by NGOs, science

2 The Constitution of The Republic of Poland of 2 April 1997 (Journal of Laws No 78, item. 483, as amended)
5 Letter of KPRM of 10 April 2011
institutions and international human rights institutions have remained the sole data source on discrimination against LGBT persons.

Only recently the introduction of Equality Bodies into Polish legal system has resulted in firsts attempts to create such database.

The report currently being prepared by the Government Plenipotentiary for Equal Treatment attempts to show legal situation of LGBT persons in the areas of employment, education, health care, access to goods and services and the general model of anti-discrimination policy. However it does not show statistical data. The Human Rights Defender on the other hand gathers data from individual complaints that are filed with the Office. According to information of Polish Society of Anti-Discrimination Law (hereinafter: PSAL) received from the RPO Office in 2010, the RPO heard 246 cases of discrimination or unequal treatment in relation to other persons, reported by individuals or NGO’s. As it transpires from the summary data for the period of 1 May 2009 to 31 December 2010 (beyond the year 2010 and covering 361 interventions, motions, letters and problematic cases), 5% of the cases concerned discrimination based on sexual orientation. Upon considering the reported cases, the RPO prepared relevant responses, explanations or letters referring the case to a competent unit.

Apart from RPO and PRT no other state bodies conduct data collection and analysis of cases of discrimination against LGBT persons.

**Polish legal system**

In the Polish legal system, effective legal remedies, accessible to persons discriminated against on grounds of sexual orientation, are only available in the area of employment and work. These include both the conclusion, duration and termination of employment with the employer from both public and private sectors. This protection also applies to persons employed under civil law contracts. The person against whom the principle of equal treatment was violated on the basis of sexual orientation is entitled to non-pecuniary damages and compensation for pecuniary damage. Shifting the burden of proof to the employer facilitates the exercise of these guarantees for the employee.

However, there is no effective protection of LGBT persons against hate crimes, including hate speech. Due to the fact that existing regulations do not distinguish a homophobic motive of these crimes, the victims can only use general regulations which usually require them to be more proactive in terms of gathering evidence and sometimes filing private indictment, and in case of conviction of the perpetrator (a rare

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8 Letter of the Chancellery of the Prime Minister of 10 April 2012, Proposals of Recommendations to the National Action Plan for Equal Treatment prepared by PRT.
occurrence, as there is a practice of discontinuing such proceedings by the prosecution) provide for milder
sanctions and penalties.

(case no. 2) S.B. was beaten in one of Warsaw’s parks by the city guards. The Police, notified about the
incident, refused to accept the notification. The district prosecution discontinued the proceedings due to the
“failure to detect the perpetrators”. All the more surprising was the decision of the Prosecution, that the
officers who had served that night in the area were found without difficulty, and the relevant Police data
were made available. The explanations provided to the RPO, who was involved in a case, show that the
Prosecution discontinued the proceedings because identification of perpetrators by the victim "was not
made with certainty, was not without a doubt".

Sometimes victims decide to use the general regulations ensuring the protection of personal rights under
the Civil Procedure (CCP). This measure, however, requires the proof of unlawful actions and their
consequences resulting in damage to be delivered by the victim, and also involves the need to bear court
costs. The observations of LGBT organizations also show that, in the case of one-time violations and
"collective" breach of personal rights the measure may prove to be very ineffective.

(case no. 6) The case against Presspublika publishing house. The Publisher was sued for publishing a
drawing of A. Krauze, a feature article by M. Rybinski and the article of T. Terlikowski relating to the
consequences that could arise in the case of introducing a formal union between partners of same sex.
They compared homosexuality to bestiality. The defendant’s attorney defended the argument that these
publications were the action in defense of the legitimate interest of society, which is a lawful excuse.
Besides, they did not exceed the limits of allowable satire and criticism specified in article 41 of act of 26
January 1984 press law (UPP). The court hearing the case ruled that the disputed articles could not violate
personal rights of the plaintiff as there was no personal connection between them. Additionally, the court
stated the individual sensitivity of the plaintiffs is purely subjective, and in this case a notion of violation in
objective sense does not apply (judgment of the District Court in Warsaw of 26 January 2012, ref. No. IV C
737/10).

The person who is a victim of a public official’s misconduct is entitled to file complaints under the provisions
of the Code of Administrative Procedure (hereinafter: CAP) and internal regulations governing public
administration services. However, as filing the complaint is rarely followed by actual initiation of disciplinary
action against the public official, the system is virtually ineffective, and therefore rarely used by the persons
discriminated against. For instance, the National Council of the Judiciary (hereinafter: KRS) may file a
request to the Disciplinary Proceedings Representatives for initiating disciplinary action against judges, who
have committed an official misconduct (discrimination, tolerating discrimination). However, it has never
transpired, that a notice of such behavior of a judge was referred to the KRS.

Legal remedies stipulated by the Equality Act (hereinafter: EA) implemented in 2011 also proved ineffective
in practice. The information obtained from the Ministry of Justice shows that 30 compensation for damages
cases were received by regional and district courts under EA. The courts concluded 17 cases (9 dismissed, 3 remanded, 1 returned and 2 discontinued), 13 cases remained to be examined in 2012. The RPO agrees with the assessment of such legal regulations: “considering, however, the low number of cases of claims for damages for breaching of the principle of equal treatment directed to the courts, it seems that the mechanism of judicial protection of the principle of equal treatment in the first year after the Act was not sufficiently effective.

There are no appropriate procedures to ensure that the potential victims of discrimination could develop awareness of the existence of legal protection and access to it, also in cases of violation of law by persons acting in an official capacity. The only actions that could increase awareness of legal protection and access to it are taken by national Equality Bodies, Ministry of Justice, and the Prosecutor General (hereinafter: PG). Their drawback, however, is the fact that materials given by these institutions are poorly distributed, and information posted on websites is not exposed to potential victims to facilitate their use.

Although various state institutions take, or declare their willingness to take, some action in regard of LGBT people’s rights, their position remains marginal, and the implementation of the Recommendation in this area is extensively built upon the activity of LGBT organizations. On the July 18th 2012 the PRTs Office held an opening conference for the ‘Combating discrimination of LGBT persons in Poland’ project that will be carried out by PRTs Office with the support of Council of Europe. The project is meant to monitor and implement the Recommendation. KPHs President took part in the conference and presented some data gathered by the organization so far.

In 2010, the Recommendation and its Annex were translated by the Ministry of Foreign Affairs (hereinafter: MSZ). The Recommendation was sent to the ministries, some government agencies and the national equality bodies. NGOs have not reported that the Recommendation and its Annex were in any way distributed in other areas identified in this Recommendation. Foreign Minister emphasized, that the translation was only a draft version. Only in April 2012 an official translation of the document was to be prepared on the basis of the draft translation for publication on the pages the Council of Europe devoted to LGBT issues. A document is visible on the PRT web page, but it does not indicate whether it is still a draft or an official version.

B. Appendix to Recommendations CM/Rec(2010)5

i. Right to life, safety and protection against violence

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13 See the reply of the undersecretary of state of the Ministry of Justice to interpellation 581 concerning detailed statistics kept by the Ministry of Justice on discrimination cases brought before Polish courts; http://orka2.sejm.gov.pl/I27.nsf/main/6009A444.


16 Letter of the Minister of Foreign Affairs of 6 April 2012.

a. „Hate crimes” and other hate-motivated crimes

The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat “hate crimes” and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.

Violence based on homophobia and transphobia is a significant problem in Poland. Data collected by Campaign Against Homophobia in 2010 and 2011 show that over 10% of LGB persons in Poland have experienced physical violence because of their sexual orientation. Almost half of respondents (43.9%) have experienced psychological cruelty. KPHs report, issued in 2011, shows that 61.9% of persons suffering violence experience it on regular basis (6 or more times).

Analysis of the nature and causes of negative attitudes towards LGBT persons, aimed at developing an effective policy to combat these phenomena, exist and are publicly available. However, they were all prepared by non-state actors. The only comprehensive State initiative in this regard is the analysis constituting the basis for developing the National Program for Combating Discrimination carried out in 2012 by the order of the PRT.

Research on the level of social acceptance or hostility towards LGBT persons has been conducted since 2001 by Public Opinion Research Centre (hereinafter: CBOS) and slowly becomes regular. It is also accompanied by research conducted by NGOs and research institutes which carefully analyze the phenomenon of homophobia within the assessment of social situation. The studies conducted so far show that the attitude of Poles towards gay persons is relatively stable and mostly negative. Most of the population still does not give explicit consent for gay and lesbian presence in public space, and sees homosexuality as a deviation from the norm. Over the past few years, however, small changes have become noticeable, indicating the direction of increasing tolerance towards LGB persons. CBOS research shows that the percentage of persons who personally know a gay or lesbian is increasing (in 2005 - 16%, in 2010 - 24% of respondents). An increasing number of persons believe that LGBT organizations should have the right to arrange public demonstrations (in 2005 - 20%, in 2010 - 30% of respondents). More and more persons believe that same-sex couples should have the right to publicly display their way of life (in 2005 - 16%, in 2010 - 29%), and the

18 See Explanatory Memorandum for definitions of “hate crimes” and “hate-motivated incidents”.

19 Data gathered on a sample of ca. 12,000 persons in 2010 and 2011 within the framework of the project Raport na temat sytuacji społecznej osób LGBT za lata 2010–2011 [Report on the social situation of LGBT persons for 2010–2011] carried out by the Campaign Against Homophobia (KPH), the Lambda Warsaw Association and the Trans-fuzja Foundation (not yet published).


right to establish a civil union (in 2003 - 34% in 2010 - 45% of respondents). More and more persons also believe that homosexuality is normal (in 2001 - 5%, in 2010 - 8% of respondents). CBOS survey does not include, however, the analysis of attitudes towards bisexual or transgender persons.

Existing systems for recording and publishing statistical data on hate crimes and incidents motivated by hate do not allow for recording and publishing data on homo- and transphobic crimes or incidents of hate, because of the absence of homo- and transphobia as the motive of a crime in the Criminal Code. The RPO has taken some measures to allow for the systematic collection and presentation of data on application of non-discrimination principle also in relation to sexual orientation and gender identity. The first reports are to be published at the end of the second quarter of 2012.

In Polish legislation, legal measures to combat hate crimes and other hate-motivated incidents apply. Hate crimes have been codified in Polish Criminal Code (hereinafter: CrC) and include offences prosecuted ex officio. These measures do not mention sexual orientation or gender identity as grounds of hate crimes or hate speech. For several years, despite repeated appeals of NGOs, the government have been avoiding taking legislative action to include sexual orientation and gender identity in the catalog of characteristics penalized under this category of offences. The PRT has undertaken the dialogue between the NGOs and the Minister of Justice to consider including sexual orientation and gender identity as possible motivation of hate crimes and hate speech - so far unsuccessfully. In 2011 and 2012 (during two different terms of the Sejm - lower house of the Polish Parliament) draft laws on amendments to the CrC introducing protection of characteristics of sexual orientation and gender identity were submitted to the Speaker of the Sejm.

Due to the fact that Polish criminal law does not provide for a legal definition of a hate crime and does not include hate crimes committed on the grounds of sexual orientation or gender identity of the victim, such motivation does not in fact constitute an aggravating circumstance. This also causes lack of action on the part of the State to disseminate the definition in the wording arising from adopting the Recommendation of the Council of Europe. However, the definition of hate crimes including the sexual orientation characteristic is used for the police training purposes.

LGBT topics are slowly being introduced to the training programs and procedures used by the police and justice system, however these programs and procedures do not provide adequate knowledge and skills to effectively combat this type of crime or support victims and witnesses.

22 Letter of the RPO of 5 April 2012.
23 Letter of the Minister of Justice of 17 November 2011.
Within the administrative system it is only the activities of the police governing bodies that display a formation of a more systematic nature of actions to increase the awareness and development of appropriate attitudes of officers towards minorities. It is worth noting that the presence of LGBT issues in training for the police is more significant than in any other area covered by Recommendations. This is mainly due to the activity conducted by the police governing bodies in this area, in particular the network of police Commissioners for the Protection of Human Rights who are present in the police force since 2004. Nonetheless, this lack of evaluation makes it impossible to determine clearly how the content of training courses and presence of the Commissioners translated into a change of attitudes and working practices of the average policeperson. There is still a lack of profiled trainings covering exclusively LGBT issues. In the absence of appropriate procedural arrangements, possible changes in police attitudes do not translate well over the whole system.

There are no separate tools for preparation and examination of reports of hate crimes or hate-motivated incidents allegedly committed by the law enforcement officers (mainly the police and municipal police), and the cases referred to by KPH show that the submission of such complaints by generally applicable regulations is ineffective in practice.

(case no. 1) During commemoration of the “Day of Silence” in 17 April 2011 in Zielona Góra an incident occurred involving the attack of the participants of the counter-manifestation involving egg-throwing, insults and destroying the flag, owned by KPH. The dispatcher, who received a complaint on the police line, refused to accept verbal notification of the offense, as he decided that there is no need for it as nothing had yet happened. Prosecution was informed about the behavior of the official, as well as about lack of protection for participants of the meeting despite that relevant information had been sent to the Community Council. However, the Prosecution refused to start investigation due to formal errors in crime notification.

(case no. 8) Case of P. C. who had been stopped by municipal guards, called names and sprayed with tear gas. Being in shock he got out of the police car he was held in and started running away. When a policeman tried to restrain him, he bit him on the palm of his hand. P. C. was taken to the hospital and tested on HIV. KPH has no exact information on the proceedings, the only thing we know is that the policeman filed a criminal case against P. C. and he was punished with a fine.

(case no. 9) P.R. has been detained without adequate legal basis, and then taken to the detoxification center. During the arrest the policemen used insulting language against him and ridiculed him.

Minister of Interior (hereinafter: MSW) does not however plan to establish police units, whose task, in particular, would be to investigate crimes and incidents related to sexual orientation and gender identity. The Minister explained that such solution supports the desire to avoid unnecessary difficulties that may arise if there is a necessity to move the victim to a remote police station. An on-line system of anonymous complaints has not yet been created. Moreover, there is no other way of allowing the injured party or a third parties to report the incidents to gather information about their nature.

The training programs and codes for prison staff cover the issues of minorities in a general way referring to human dignity. For this reason they are not able to guarantee non-discriminatory treatment of prisoners because of their sexual orientation or gender identity. Legal regulations require the administration of the

27 Letter of the Minister of Interior of 5 October 2011.
prison to ensure the safety of LGBT prisoners while serving their prison sentences solely on the basis of general provisions.

Every imprisoned person can use general rules concerning the submission of complaints and requests. However, due to the large stigma on non-heterosexual and transgender persons in prisons environment, the convicts do not take advantage of these regulations in the event of discrimination based on sexual orientation or gender identity. In practice, the effectiveness of these provisions depends on the decision of the director of the particular prison or detention center, because each time the general provisions need to be interpreted in favor of the person threatened with discrimination.

b. "Hate speech"

Section I.B. of the Appendix requires measures to combat “hate speech” on grounds of sexual orientation or gender identity, including laws penalising such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBT people.

Research conducted by the KPH in 2010-2011 indicates that psychological violence, including hate speech was experienced by over 43% of LGB persons and nearly 40% of transgender persons.

In Polish law there are punitive measures which penalize hate speech under some circumstances. These measures do not, however, include either homo- or transphobic motivation of such crimes.

The authorities do not take any systemic actions which would encourage practices to promote a culture of respect, tolerance and diversity, and avoid the negative and stereotypical presentation of LGBT persons by media organizations, despite the frequent occurrence in the media of expressions of a homo/transphobic nature. (case No. 4, 10)

(case no. 4) Polish National Party Published a list of persons allegedly with homosexual inclinations in mass communication, which led to committing a crime of defamation (article 212 of the Criminal Code). On 25 October 2010, the Deputy Regional Prosecutor for the Praga district of Warsaw announced the discontinuance of preparatory proceedings as there was an absence of public interest in making the private accusation a subject to public prosecution. The decision was in force. PET addressed a notice in this matter to Inspector General for the Protection of Personal Data (hereinafter: GIODO) or the Attorney General in relation to suspicion of breaching of the Personal Data Protection Act of 29 August 1997 (hereinafter: UoODO) provisions and committing the crime of defamation.

(case no. 10) A case of homophobic statements by Marek Sieniawski, the vice-president of "Solidarity" in the City City of Poznan, appearing on the pages of the newsletter "Solidarity" in 2011. The statement referred to the same-sex unions, and contained such phrases as "A gay is a rich fag" or “Two gays treat themselves to a newborn male, and all the politically correct crow with delight. Horror.”

29 Data gathered on a sample of ca. 12,000 persons in 2010 and 2011 within the framework of the project Raport na temat sytuacji społecznej osób LGBT za lata 2010–2011 [Report on the social situation of LGBT persons for 2010–2011] carried out by the Campaign Against Homophobia (KPH), the Lambda Warsaw Association and the Trans-fuzja Foundation (not yet published).
Statements bearing the hallmarks of hate speech are often condemned by Members of Parliament and government officials (case no. 21), while right-wing politicians and celebrities often lessen the impact of such incidents, defending them as exercise of “free speech” (case No. 26).

(case no. 21) The case of MP Robert Węgrzyn, who on March 9, 2011, in an interview with a journalist referred to a joke of one of his party colleagues “forget about the gays, but with lesbians … I would sure check that out.” The remark was the subject of the meeting of the Ethics Committee, and the MP was expelled from parliamentary group by peer tribunal. The case was also monitored by RPO, who sent a letter to the Speaker asking to clarify the case.

(case no. 26) Statement by Mr. Jan Dziedziczak at a meeting of the Parliamentary Committee on Culture and Media on 26 January 2012, during which he turned to Ms. Anna Grodzka with the words “you’re right, sir”. Commenting on this incident, on 18 March 2012 priest Tadeusz Rydzyk said on air of radio Maryja about Anna Grodzka: “When one of the MP’s tongue slipped, and said ‘sir’ to a man who, at the age of 56, said he is a woman and began to make himself into a woman, they want to bring him before an ethics committee! People, where are we? Let’s be normal. We do not condemn a person, the sinner, but we condemn the sin. We say normal is normal, black is black, white and red is white and red, and let it be so. Let it be Catholic Poland indeed. ”

So far, guidance or other steps to raise awareness of the duty to refrain from homo- and transphobic statements among public authorities and institutions have not been issued. If it is at all possible to talk about raising awareness of the duty to refrain from hate speech, it is more the result of continuous intervention of the media and NGOs, supported by Equality Bodies rather than a result of a coordinated national policy. Sometimes, however, on occasions there have been actions by various state agencies with a view to fostering changes in attitudes in this respect. Nonetheless, they had not been the result of a government policy being adopted on a governmental level.

Legal measures criminalizing “hate speech” on-line have not yet been implemented despite the evident need in this respect. (case no. 27)

(case no. 27) An example of an insufficient response of state bodies to actions that threaten the safety of LGBT activists, is a case of fascist website Red Watch. The site contains information about persons engaged in social activity, contrary to the far-right ideology of the founders of the website. In large part they are the representatives of LGBT organizations. The site contains pictures of these persons, together with phone numbers, addresses and places where they can be found. Since the launching of the website, they continually have received threatening text messages and emails. In May 2006 there was an attack on the anarchist activist whose data had been previously published on Red Watch. The Prosecution had been notified of the existence of the site already in 2005. Although several individuals associated with it were detained, the website continues to function. The Prosecution explained that the website is hosted at a U.S.-based server, which means it cannot be closed down.

The State has not taken action designed to encourage Internet Service Providers to take measures to prevent the dissemination of homo- and transphobic materials, threats and insults. The Internet Service Providers themselves did not show initiative in this regard as well.

ii. Freedom of association

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public
funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

In principle, organizations declaring action for LGBT persons can register their activities on an equal footing with other organizations. Sometimes, however, the registration process of such organizations is unreasonably prolonged due to procedural difficulties, yet it cannot be unambiguously determined whether such impediments are caused by the prejudices of the officials. Examples of actions taken by the State to ensure that LGBT organizations are free to act, to actively provide organizations with opportunities to defend their interests, if necessary, to facilitate and encourage their work in practice are rare. There is lack of commitment from the State to support the basic objectives of the activities of such organizations. The LGBT initiatives implemented by the state and NGOs are in most cases perfunctory in nature. Cooperation during the preparation of the cooperative endeavor does not translate into State involvement in the implementation stage. The results of work of LGBT organizations generally do not meet with any activities of the State aiming at their promotion. Government officials often do not want to take part in such activity, for reasons that cannot be rationally justified. (case no. 35)

**Case of Mokotów District Council**, who did not agree to the display of rainbow flags on buildings of Mokotów District Office on Gay Pride parade in 2011. The decision was justified by the desire to maintain neutrality in this case, especially given the fact that it relates to private matters of citizens. This is even more surprising in the light of the fact that Ursynów District Council agreed to display the same flags.

LGBT organizations are not involved in the development and implementation of public policy on a partnership basis. There are exceptions to this rule such as the Commission for Social Dialogue Center of the City of Warsaw and expert consultation meeting with PRT on the Draft National Program for Equal Treatment or quarterly meetings of LGBT organizations with RPO. Still, in most areas of public life the authorities do not see the need to take any initiatives on LGBT issues.

The law allows for public financing of activities of all NGOs without discrimination. In practice, the activities led by LGBT organizations are rarely considered a priority for local and central authorities, including the redistribution of resources. That is why LGBT NGOs applying for State or municipal funding submit projects not only specifically relating to LGBT persons, but general ones, i.e. concerning human rights, diversity, HIV/AIDS prevention.

Human rights organizations and their representatives cannot be guaranteed any special protection from the State. Occasionally, violent incidents against LGBT activists occur (case No. 40). The perpetrators often remain undetected. An incident where the perpetrators of attacks on LGBT activist were police officers also happened (case No. 39). State involvement in the protection against the hostility and aggression against LGBT activists is still limited to securing equality marches. A lack of legal regulations concerning hate crimes motivated by homo-and transphobia has an impact on the status quo.

**Case no. 40** An example is an incident from 26 April 2012, when two smoke grenades were thrown under the Cracow office door of MP Anna Grodzka (former President of Trans-fuzja Foundation and a transgender person) during the meeting "Grodzka on Bracka". The room was filled with smoke and the participants had to leave. Despite the action of the Police, the perpetrators remained unidentified.

**Case no. 39** On 11 November 2010, during a counter-demonstration to stop a march whose participants appealed to the extreme right-wing, homophobic and xenophobic ideas, Robert Biedron, a KPH activist was detained and then beaten by the police. The arrest itself was recorded and attracted considerable controversy as to the proper conduct of the officers. Then Biedroń was charged with an assault on the
There are a few examples of State actions creating an atmosphere conducive to the activities of LGBT organizations, enabling them to operate freely and promoting respect for their work. However, they are not the result of conscious and coherent policy in this area, but they are a consequence of decisions of individual officials, who notice a need to engage in creating a favorable environment for the LGBT organizations. (case no. 47)

In 2011 the Ministry of Interior invited KPH to join celebration of the European Year of Volunteering in Poland through its involvement in the realization of the project "Pavilion", which allowed for the presentation of KPH activity and to conduct a promotional campaign.

LGBT organizations are able to cooperate freely with national human rights institutions, Ombudsperson, media and other human rights organizations and they actively exercise this right. Representatives of LGBT organizations are able to participate in trainings, international conferences and other forms of activity related to human rights, organized by both state institutions and NGOs.

The information held by NGOs suggests that the rules for assistance and use of human rights defenders are not applied in the third countries, such as participation/observation of trials or issuing emergency visas. State activity in this field has so far been limited only to participation in meetings with foreign representatives of LGBT organizations, aiming to exchange experience. LGBT organizations may invite the LGBT activists from other countries for trainings or scholarships.

Consultations
Public consultation is not a mandatory part of a legislative process. NGOs have to closely follow the proceedings and have a right enter the consultations. The State party however does not have an obligation to invite them to take part in the process. The LGBT community itself is not regarded as a major target of many of the proposed regulations that may affect it (e.g. family law, in vitro provisions, adoption, healthcare, etc). So far, consultations on the implementation of the Recommendations have not been held.

iii. Freedom of expression and peaceful assembly
Section IV of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

So far, no State action has been taken aimed at promoting tolerance of LGBT persons in the media. It is particularly evident in the case of incidents of a homophobic nature reported in the media. The authorities at various levels often remain silent and do not condemn such violations. Only a few politicians see the need to address such issues in their speeches. In most cases, the problem is not noticed, and very often public officers are the authors of homophobic comments. (case no. 13, 16, 17)

On 21 September 2010 in a TV show, a former PET, Ms. Elżbieta Radziszewska publicly disclosed homosexual orientation of her interlocutor, a law expert and NGO activist.

Statement by Mr. Jan Dziedziczak at a meeting of the Parliamentary Committee on Culture and Media on 26 January 2012, during which he turned to Ms Anna Grodzka with the words "you’re right,
sir". Commenting on this incident, on 18 March 2012 fr. Tadeusz Rydzyk said on air of radio Maryja about Anna Grodzka: “When one of the MP’s tongue slipped, and said ‘sir’ to a man who, at the age of 56, said he is a woman and began to make himself into a woman, they want to bring him before an ethics committee! Persons, where are we? Let’s be normal. We do not condemn persons, the sinner, but we condemn the sin. We say normal is normal, black is black, white and red is white and red, and let it be. Let it be Catholic Poland indeed.”

(case no. 17) A statement of MP Stanisław Pięta as a part of parliamentary interpellation, regarding plans for the National Museum exhibition: “The criterion to single out homosexual art is artificial, and the methodology of the exhibition incomprehensible. Why does professor Piotrowski, director of the National Museum, limits the exhibition to "works" relating to homosexuality, why he wants to discriminate against art of necrophiliacs, pedophiles and zoophiles? Homosexuality is a deviation similar to each of the above”.

LGBT persons have a constitutional right to exercise the right of peaceful assembly. In fact, by 2005 the law had been repeatedly violated by the government through its decisions to ban gatherings, with justifications based on provisions of the Traffic Law or the Law on assemblies. (case no. 57)

(case no. 57) Equality Parades in Warsaw were banned in 2004 and 2005. Decisions of the Mayor were then justified by security considerations, the need to avoid the risk of riots by opponents of the march and the difficulties in city traffic. However, refusal to grant consent for the Equality Parade in 2005, was accompanied by the consent of the Mayor to hold a few days later (18 June 2005), the manifestation of right-wing circles as the "Parade of normality". During the demonstration the participants chanted their homophobic slogans. 18 January 2006 the Constitutional Court ruled (Case K 21/05) that the provision, which was invoked by the Mayor of Warsaw while banning demonstrations, is unconstitutional in so far as it infringes the freedom of assembly, and on 3 May 2007, the ECHR ruled (Bączkowski and others v. Poland) (complaint No. 1543/06) that prohibiting the Equality Parade in 2005, the government violated the European Convention on Human Rights.

However, the right to peaceful assembly has been confirmed by several fundamental decisions of national courts, the Constitutional Court and ECHR. At present, this type of State action has been discontinued. Although situations occurred, where the conditions given by the authorities were not generally applicable to other demonstrators, for example relating to the route, time or course of the demonstration to avoid collision with possibly aggressive counter-manifestations. During pride events there are still provocations on the part of groups hostile to LGBT persons (whose perpetrators often remain unidentified), but a possibility of organizing a peaceful LGBT assembly is guaranteed in Poland. In the past, there are cases where, in spite of warnings of the possibility of hostile reaction to the LGBT assembly, the law enforcement authorities did not provide adequate protection for its participants. Now the protective measures for LGBT demonstration are much more effective. In smaller towns however there are isolated incidents of city officials trying to jeopardize pride marches and not providing sufficient protection. There are also incidents where the manner of intervention of the law enforcement officers raised serious concerns about their compliance with the law. (case no. 1)

30 Constitution of the Republic of Poland, Art. 57: The freedom of peaceful assembly and participation in such assemblies shall be ensured to everyone. Limitations upon such freedoms may be imposed by statute.

(case no. 1) When KPH Zielona Góra wanted to register a peaceful gathering to commemorate a „Day of Silence” on 17 April 2011 in Zielona Góra the city representatives tried to discourage the organizers by saying that they will be responsible for any damage done to the city property or third parties, while according to the then binding law – they were not liable for anything. During the march an incident occurred involving the attack of the participants of the counter-manifestation involving egg throwing, insults and destroying the flag, owned by KPH. The city did not provide police protection for the demonstrators, despite that relevant information had been sent to the Community Council.

Polish law provides for the possibility of challenging the decision to ban the assembly. The appeal is then a two-instance procedure. The procedure is long and if the decision is issued to ban the assembly a few days before the date of the event, it makes it impossible to overturn the decision in time for the holding of demonstrations in the originally scheduled date. In practice, this allows the authorities to block the meetings. In the past few years, such cases have not occurred.

There is however new concern, as an amendment of the assembly law has been introduced. It stipulates among others that an assembly will have to be registered 6 months prior to the event which will block the possibility to react to current political and social events. Also it allows to ban an assembly which would collide with other events organized in the same place and time and the authorities come to a conclusion that it might cause damage to peoples life, health or property. The new law also puts new obligations on the organizer of the event and submits them to penal fee of maximum 7 000 PLN (ca. 1700 EUR).

The interference of local authorities in Warsaw and Poznan to organize equality marches in 2005 has been condemned and declared illegal by some State institutions and politicians. (case no. 61)

(case no. 61) Mayor of Warsaw justified his decision of 9 June 2005 with apparent lack of meeting formal requirements on the part of the organizers, constraints arising from road traffic regulations, as well as the need to avoid possible clashes with other demonstrations, organized on the same day. On 3 June 2005 the Main Engineer of Traffic in Warsaw, acting under the authority of the Mayor of Warsaw, refused to issue a permit to organize the parade, giving the reason of the failure of the organizers to submit the "traffic organization plan" within the meaning of art. 65a of the Law on road traffic, which they had allegedly committed. On the same day the organizers of the march of equality told the Mayor of Warsaw about stationary assemblies they intended to hold on 12 June 2005 at seven different sites in Warsaw. Four of these meetings were to be devoted to protest against discrimination against various minorities and to support the activities of groups and organizations fighting against discrimination. Three other of planned assemblies were to protest against discrimination against women. On 9 June 2005, the President issued a decision prohibiting stationary rallies. In his decision, the President relied on the argument that the meeting organized in accordance with the provisions of the LAA must take place off the main road used for traffic. If the organizers were to use the roads, stricter rules would apply. The organizers wanted to use cars to transport sound equipment. The organizers did not indicate where and how these cars would be parked during the assembly, so as not to disrupt traffic and the movement of persons would be organized between places of assembly. In addition, as there had been a number of requests for permission to hold other gatherings on the same day, the tenor of which was against the ideas and intentions of the applicants, permission had to be refused to avoid any possible violent clashes between participants of different demonstrations. On the same day the city authorities, acting on behalf of the President, agreed to organize, as requested by the organizers of the march, three planned assemblies concerning discrimination.
against women. The same day, the authorities allowed to carry on 12 June 2005, six other demonstrations. The themes of these meetings were as follows: "Stricter action against convicted for pedophilia", "Against any work on the law on partnerships", "Against propaganda for partnerships," "Education based on Christian values as a guarantee of a moral, healthy society," "Christians respecting the laws of God, the laws of nature are a first-class citizens", "Against adoption of children by homosexual couples".

All other serious disruptions of assembly of LGBT persons, which over the past few years have occurred on the part of opponents of LGBT persons, expressing that opposition through violent physical or verbal attack, have been consistently criticized by leftist politicians and, sometimes also by the Equality Bodies. (case no. 64)

(case no. 64) Despite the ban on Equality parade in Warsaw in 2005, the event was attended, among others by Deputy Prime Minister Izabela Jaruga-Nowacka, Sejm Deputy Speaker Tomasz Nalecz, as well as Senators Maria Szyszkowska and Kazimierz Kutz.

iv. Respect for private and family life (excluding specific transgender issues)
These paragraphs of Section IV of the Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

Same-sex sexual activity has not been criminalized in Poland since 1932. There is also no difference in the age of consent. The age of sexual consent is fixed at 15, the same level for the opposite sex and same-sex relationships, regardless of gender status.

The Criminal Code, the Code of Criminal Procedure and the Criminal Executive Code include provisions whose content and method of application are discriminatory towards LGBT persons. An interpretation of such terms as “a person in cohabitation” or “a person permanently residing and co-managing the household” still poses a serious dilemma. They may result in less favorable treatment in terms of granting the right to refuse to testify, in issues related to executing a sentence or visiting rights with a partner in prison.

Despite repeated appeals by the non-governmental organizations, the government has not taken the initiative to change those provisions or their application. According to the Ministry of Justice “in Polish law there are no such provisions” that could discriminate against LGBT persons.

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33 Art. 200 of the CrC:
§ 1. A person who subjects a minor under 15 years of age to sexual intercourse or makes him/her submit to another sexual act or to perform such an act shall be subject to the penalty of deprivation of liberty for a period of 2 to 12 years.

34 Art. 115 of the CrC:
§ 11. A next of kin is a spouse, an ascendant, descendant, brother or sister, relative by marriage in the same line or degree, a person being an adopted relation, as well as his or her spouse, and also a person actually living in co-habitation.

35 Letter of the Minister of Justice of 17 November 2011.
Information available to the NGOs do not show that state authorities, including law enforcement, collect data on sexual orientation. Data on sexual life belong to so-called sensitive data, which are subject to special protection. It is forbidden to process such data except in enumerated cases that allow it.

However, the authorities have not resolved doubts about the storage of information gathered by Milicja Obywatelska in 1985-1987 during operation Action “Hyacinth”. The action was aimed to collect data about Polish gays and their environment. As a result of activities of the Communist police, about 11,000 personal files were registered, including data on sexual preferences. It has not been established clearly what happened to those files.

Information on sex reassignment surgery is not understood as particularly sensitive, probably due to the fact that gender identity is not recognized by the law to be a so called ‘personal interest’. Although gender is considered a personal interest, it is required to enter the data into the birth certificate, and therefore it has a different status than sexual orientation. Sex assigned at birth is reflected on the birth certificate of the person. In the case of correction of gender assigned at birth, a correction is recorded on a birth certificate, but the original data still appears.

Civil partnerships
In principle, Polish legislation does not regulate the rights and obligations of unmarried couples. Same-sex couples do not currently have the possibility of registering their relationship. Cohabitation is just a fact, and persons living together and managing common household without marriage bond (cohabitants or partners) are treated by applicable law in most cases as strangers. The few rules that apply to non-marriage relationships relating to ‘next of kin’ are most often interpreted or used in a way that excludes their use in relation to same-sex couples.

The State does not take action leading to a comprehensive recognition of these rights and obligations with respect to same-sex couples. Polish law does not provide for the institution of registered same-sex unions. The PRT admitted that the problem exists and needs to be solved. Initiatives for introducing the legal recognition of registered unions in the form of draft laws were taken on several occasions. Each time, however, there was a lack of political will for the projects to become a law. Two parallel draft laws on registered unions filed during current term of the Sejm were rejected by the Parliament. Another one is currently waiting to be proceeded on - a ruling party member introduced a draft bill of civil partnership agreement which would apply to both same-sex and different-sex couples. It addresses some important problems of cohabiting partners, however the rights which it assigns are still very restricted.

In practice Civil Registry Offices often try to even prevent the conclusion of same-sex unions by Polish citizens abroad, by refusing to issue a certificate stating the legal capacity to marry abroad, on the grounds that the wording of the Constitution, which provides only for the possibility of concluding a marriage between persons of different sex.

Krzysztof Śmiszek – the President of the PSAL and a human rights lawyer commented on the notion in the report for KPH and LAMBDA: “In the period covered in this report there is still a problem of practices of Polish Civil Registry Offices refusing Polish citizens who wish to establish a same-sex union with a person abroad the certificate of marital status. KPH, The Government Plenipotentiary for Equal Treatment Eliżbieta

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37 Two projects were developed in 2004, one project during the last term of the Sejm and three in the present term.
38 As in decision of the Registry Office of 9 November 2010.
Radziszewska (the former PRT), the Human Rights Defender were among the institutions intervening in this case, claiming that such practices are illegal and discriminatory. This case is being examined by the Committee on Petitions of the European Parliament and the MEPs who sit on this Commission for years unanimously have demanded further explanation from the Polish government, considering such practices of Polish administration to be a violation of basic principles of the European Union, namely the prohibition of discrimination based on sexual orientation and free movement of persons within the Union. In addition, Ms. Viviane Reding, European Commissioner of Justice and the European Union Fundamental Rights, in a statement for "Rzeczpospolita" on 2 February 2011, stated that the citizen has the right to obtain a document of their marital status. Since then the law has not been amended.

Parenting rights

Polish law does not stipulate that a parent's sexual orientation has any influence on decisions concerning parental responsibility or contact with the child. The main premise used to decide on the formation of such relationships is the child's best interest, which is the guiding principle of the Polish system of family law. It is expressed in art. 18 of the RP Constitution and confirmed by detailed regulation of family law (art. 93 and art. 1132 of Family and Guardianship Code). In practice, however, the arguments relating to the sexuality of a parent are raised in the proceedings for the settlement of parental authority or contact with the child.

In the Polish legal system there are no laws that state that only a heterosexual person can adopt a child. PBS DGA survey of 2008 showed that 79% of the surveyed do not want homosexual persons to have the right to adopt children. In practice, therefore, due to the vagueness of the term "child's best interest", consideration of a specific application for adoption may lead to the use by the adoption agency worker or a judge of their own stereotypes when assessing whether the adopter will be able to guarantee child's best interest.

In Poland there is no legislation on reproductive rights. Fertilization with the use of assisted reproductive techniques is a private and not state-funded. In practice, access to such treatment is not free from discrimination against unmarried women.

40 Art. 18. Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.
41 Act of 25 February 1964, The Family and Guardianship Code (Journal of Laws No. 9, item 59, as amended): Art. 93. § 1. Both parents shall be entitled to parental authority. § 2. Should the welfare of the child so demand, the court may, in a decision establishing the descent of the child, decide to suspend or restrict parental authority of, or to deprive of parental authority one or both parents. The provisions of Art. 107 and Articles 109–111 shall apply accordingly. Art. 113. § 1. Should the welfare of the child so demand, the guardianship court shall restrict the parents' contact with the child.
42 The requirements imposed by the FGC to be met by a person intending to adopt a child include: the adopter's capacity to undertake legal transactions, his or her not having criminal convictions, an appropriate age difference, having appropriate economic and housing conditions, warranty of proper execution of rights and obligations resulting from parental authority, i.e. having personal qualities and morals as to guarantee taking proper care of the child's welfare.
44 M. Zima, Prawo osób homoseksualnych do życia rodzinnego – prawo do wychowywania własnych dzieci [Right of homosexual persons to family life – the right to bring up own children], (in) M. Zima (ed.), Tęczowe Rodziny w Polsce. Prawo a rodziny lesbijskie i gejowskie [Rainbow families in Poland. The law and lesbian and gay families], KPH, Warsaw 2010, p. 36.
v. Respect for private and family life and access to health care – specific transgender issues (Section IV of the Appendix: 20, 21 and 22, and Section VII: 35 and 36)

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

Transsexuality is not recognised by Polish law as a possible discrimination ground. There is no specific gender recognition legislation, either. The current gender recognition procedure is conducted pursuant to the Supreme Court judgments of 25 February 1978, 22 March 1991, and 22 September 1995, as well as Art. 23 CC, Art. 189 CCP and AoARORA.

A person requires a court decision to achieve gender reassignment. The decision is the legal basis for changing other documents – a new PESEL (personal registration number) is issued (only on the request of the person in interest) as it incorporates a gender marker of a person, then an ID, passport, driving license is changed according to the administrative procedure. Birth certificate is not changed fully. It is amended, but the original data (gender) is still visible for anyone who would acquire a full version of that document. It is worth noting that not everybody can obtain a person’s birth certificate – before they do so they have to prove they have a particular ‘legal interest’ in it, e.g. inheritance.

There are no laws regulating the issue of data changes on the certificates of employment and other documents relating to the employment of persons who have undergone a legal gender reassignment (other than university diplomas, which according to the law have to be changed after legal gender reassignment). Changing the data of this type of documents may occur at the request of the person who has undergone the legal gender recognition process. Still, there are no legal mechanisms forcing an employer, or a school to change these data. In 2011, the RPO intervened in this matter to the Ministry of Labor and Social Policy.

Polish legislation does not regulate at all the issue of marriage of persons after gender reassignment, due to the invisibility of this subject in the Polish legal and social reality. Marriage (in accordance with Art. 18 of the RP Constitution) shall be concluded between man and woman who’s sex is identified by their official legal status shown in their documents. The existence of references to gender reassignment does not influence the right to marry with a person of the opposite gender (to the one after the reassignment).

The issue of transgenderism is not addressed in any documents or laws relating to family life, both in terms

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45 Regulation of the Minister of Education, 28 May 2010 r.
of adoption and child care. However, it is known from cases received by the Trans-fuzja Foundation that persons choosing to reassign their gender and being biological parents usually prefer to wait until the child comes of age, to ensure that legal changes do not affect their relationship with their children.

(c)ase no. 143) Transperson waiting for a child to turn 18 before starting gender correction procedure. During the observation of online forums in 2008-2010 the Foundation has encountered a situation of a divorced transsexual with the 12 years old child from a previous relationship. The man described the difficult family situation, which arose after the divorce. The reason for the separation was not directly transgenderism of one of the spouses, but "incompatibility of personalities" (version officially presented to the court). Transgender man was granted the custody of the child (neither the court, not former spouse knew about his plans regarding correction of gender). Shortly after, as a parent caring for a child, he developed a relationship with a woman. Their relationship, due to the absence of the revised legal status, could not be in any way officially recognized by the state and the community and was considered as lesbian. They both decided to conceal their relationship, even from their children, due to fear that this fact could be used by their ex-husbands (the other partner also divorced a few years earlier) trying to get custodian right rights to the children. Transsexual man has also decided, due to these concerns, that correction of gender and hormonal medication treatment will be postponed until the child reaches the age, to avoid a situation in which they can be taken away from his custody. So far, no further information about this case was known.

Since there are no relevant regulations, no issue surrounding transsexual parenting is clear. Although Polish gender recognition procedures do not require a person to be sterilized, NGOs do not know of anyone who has had children (i.e. has conceived or given birth) after gender reassignment. The parenting status of such a person would most likely be difficult to determine, taking into account the genderized categories of mother and father (especially mother) in FGC.

No regulations guarantee effective access to appropriate medical services to transgender persons. Most medical surveys and diagnostic testing takes place in the private sector.

Neither are there standardized requirements of transgender diagnostic testing. Transgender persons wishing to have their gender corrected consult a sex therapist-psychologist who, in most cases, becomes a doctor supervising the gender reassignment process. The medical documentation (necessary for the purposes of the court analysis) includes the notes taken during the psychological interview, psychiatric opinion and all types of physiological tests (most often head X-ray, caryotype determination and assessment of gonads condition).

No regulations guarantee covering the costs of gender reassignment.

vi. Employment

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

Polish law prohibits discrimination in employment on grounds of sexual orientation, both in relation to public and private sector entities. Legislation against discrimination in employment including access to employment and promotion, dismissal, salary issues, issues of harassment and other forms of discrimination. This subject is covered mainly by three bills: The Labor Code, The Bill on access to
employment and The Antidiscrimination Bill. The laws do not mention gender identity as a protected ground. In Polish legislation there are no laws that directly discriminate LGBT employees in access to professional development.

So far, authorities have taken few initiatives that promote measures to combat discrimination against LGBT persons in employment, both in public and private sectors. Ministry of Labor and Social Policy mainly engages in projects on labor market discrimination based on age, sex or disability. A need for a wide-ranging program to address discrimination faced by LGBT employees is only beginning to take shape. The European Committee of Social Rights already in 2008 called on Poland to promote anti-discrimination laws in employment in relation to sexual orientation and gender identity.

Minister of Defense has begun to take the first steps in dealing with discrimination; however, they treat LGB issues marginally. The observations of LGBT organizations show that the command of the army still do not consider discrimination against LGB persons as a serious problem of the Polish army. Due to the large stigma and the specificity of military service it is difficult to assess the situation of LGB persons in this area.

Trans- and intersexuality are listed in the annexes to the legislation governing recruitment into the army and other uniformed services in the category of diseases and disabilities in the assessment of physical and mental capabilities to perform active military service. There are cases known of transgender persons in the police forces; the army does not allow transgender persons to serve.

There are no employment promotion programs specifically targeting transgender persons.

vii. Education

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

There is still a lack of policies and standards that would ensure equal treatment and safety of LGBT persons in school or higher education institutions. Studies conducted by KPH show that among persons

50 Letter of the Minister of National Defense of 4 April 2012.
51 Pursuant to the Ordinance of the Minister of National Defense on establishing capacity for active military service and the procedure for military medical committees in such matters (Journal of Laws 2004 No. 151, item 1595), the Ordinance of the Minister of National Defense amending the Ordinance on establishing capacity for active military service and the procedure for military medical committees in such matters (Journal of Laws 2006 No. 211, item 1557) as well as to the Ordinance of the Minister of National Defense on establishing capacity for military counterintelligence service and military intelligence service and on competence of and procedure for military medical committees in such matters (Journal of Laws 2006 No. 176, item 1304) – not admitted to active military service on account of the body’s constitution.
experiencing homophobic violence from perpetrators known to them, almost 20% experienced it from friends from school or higher education institution. Research conducted by the science club Queer UW running at the Institute of Social Sciences of University of Warsaw shows that only 18% of respondents (asked about the situation of LGBTQ persons there) among students of that university did not know any LGBTQ person at the University, while 35% of the them witnessed an LGBTQ person being publicly insulted.

Numerous schools deny the existence of LGBT persons among their students. Students who complain about homophobia in learning facility often come to KPH. (case no. 66, 67)

(case no. 66) In 2010, the Principal of one of the secondary schools in Lodz found that the behavior of two students of this school, involving the posting of pictures on the internet where the girls embrace each other, is against the Statute of the school. According to the school authorities underage girls had no right to manifest their sexual orientation. The students were suggested to either remove the photos or to change the school. After KPH intervention to the Board of Education in Lodz, a meeting with the Principal took place, and the plans to draw the consequences were abandoned.

(case no. 67) KPH dealt with the matter of a doctoral student, S.K. of a public university (Cardinal Stefan Wyszyński University), who filed a lawsuit against the University for damages for discrimination based on sexual orientation. Following the disclosure of his sexual orientation to the faculty, the student became the recipient of malicious comments. S.K. was denied renewal of doctoral studies, which involved the loss of future employment opportunities as a scientist of UKSW.

They experience homophobic behavior, not only from other students but also teachers, educators, and especially priests, nuns and catechists conducting religion lessons. The teachers who admitted to non-heterosexual orientation become themselves victims of discrimination, as being supposedly unfit to work with children and youth. (case no. 69)

(case no. 69) M.K. was a teacher in high school. As a consequence of her support for two students (case No. 66) and disclosing information about her sexual orientation she began to meet with hostility from other teachers and students. After some time, because of the homophobic atmosphere of the school, M.K. resigned from work.

A survey conducted by KPH shows that the knowledge about homosexuality of many professors of psychology, a field that should take into account the LGBT perspective to the greatest extent, is weak in Poland, and the opinions expressed are full of prejudices and stereotypes. Public universities still agree to the organization of lectures and speeches of persons who openly express their homophobic views. The Minister of National Education introduced, in the Regulation concerning the core curriculum of preschool education and training in different types of schools adopted in 2008, content aimed at preventing discrimination based on sexual orientation. However, it is not being implemented in practice. There are of

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53 See PRZEMILCZANE, PRZEMILCZANI Raport z badań nad sytuacją osób LGBTQ studiujących na Uniwersytecie Warszawskim [UNDISCLOSED. Survey report on the situation of LGBTQ students at the University of Warsaw], Queer UW, Warsaw 2011.

54 Letter of the Polish Psychological Society to KPH of 11 October 2010.

55 Ordinance of the Minister of National Education of 23 December 2008 on the core curriculum for preschool education and general education in specific school types (Journal of Laws 2009 No. 4, item 17).
course examples of positive behavior on the part of individual educational units, but they are among the exceptions.

Information on sexual orientation appears in the school curriculum. Still, it is not communicated in an objective manner and with respect for non-heterosexual persons – it is not uncommon that the students still learn that homosexuality is a ‘phase’ or a ‘disorder’ and can be altered or cured. LGBT students also cannot count on the necessary knowledge, protection and assistance to affirm their sexual orientation. The course "Preparation for family life" includes a reference to sexual identity, but it is understood only in terms of femininity and masculinity. The program does not appear to contain elements of concept of transgenderism in a manner appropriate to the current human rights standards. According to LGBT organizations the current treatment of LGBT issues in education is harmful and in no way contributes to the implementation of Recommendation.

Trainings for teachers do not pay sufficient attention to any aspects relating to the proper treatment of LGBT pupils / students as well as the appropriate response to cases of discrimination. According to KPH’s latest report ‘Equality Lesson’ ca. 50% of the faculty admit that they need special skills to be able to tackle homophobic bullying in schools.

viii. Health

Health - other than transgender specific health issues (Section VII of the Appendix: 33, 34)

These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their ‘next of kin’ without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

Homosexuality was removed from the national list of diseases. Since 1996, the official classification of diseases in Poland has been the ICD-10 of World Health Organization, which does not treat homosexuality as a disease or a health disorder. But there are cases where the content of educational materials for medical professionals deviate from this standard and presents homosexuality and bisexuality as a disorder. (case no. 72)

(case no. 72) In May 2012, KPH intervened in the matter of the homophobic content appearing in the teaching of nurses and midwives. Ministry of Health Regulation of 29 October 2003 on specialization, qualification courses and the framework programs for nurses and midwives listed homosexuality in “selected problems of sexual dysfunction and pathology”, next to terms such as exhibitionism, sadism, masochism, group intercourse, rape, prostitution.

56 M. Abramowicz (ed.) Wielka nieobecna. O edukacji antydyskryminacyjnej w systemie edukacji formalnej w Polsce [The Great Absent. On antidiscrimination education in the system of formal education in Poland], Towarzystwo Edukacji Antydyskryminacyjnej [Association for Antidiscrimination Education], Warsaw 2011.
58 See Section V above.
The information available to the NGOs shows that national health policies, research of health of the population, suicide prevention programs, the curriculum of future doctors, courses and training, monitoring mechanism and quality control of medical services do not include the specific needs of health care arising from non-normative sexual orientation and gender identity. The authorities do not take into account the specific needs of the health care of LGBT persons.

The only research on mental health status of LGBT persons involved lesbians and was carried out under the KPH project Friendly Gynecologist. It showed that the level of psychological well-being of lesbian and bisexual women is much lower than heterosexual women. 8.7% of non-heterosexual women reveals self-harm tendencies due to non-acceptance of their sexuality, 9.1% - due to non-acceptance of their sexuality by the society. A report on the situation of LGBT persons in Poland for the years 2005-2006 shows that about 25% of LGB people who revealed their sexual orientation to a medical representative have been treated in a discriminatory manner.

The information provided by the Ministry of Health shows that trainings for health workers “sensitize them to ensure the highest possible level of health with regard and respect towards all patients, regardless of their sexual orientation and gender identity”, which means that they do not address LGBT issues specifically, and their current content does not provide an adequate level of awareness of this issue among health workers. There are also no programs and educational, preventive care and treatment of sexual and reproductive health services, accessible to and suitable for LGB persons. The only preventive and educational programs supported by the state consider men who have sex with men (MSM) in the context of prevention of sexually transmitted infections and HIV and AIDS. They are mostly organized by NGOs with financial support of the state. LGB individuals can only benefit from programs offered by the health service to a very limited extent, due to the fact that the health care system generally does not see and does not ensure realizations of the needs of this group. Frequently, as far as possible, LGB persons use the services of private specialists. NGOs are also not aware of any activity that encourages health professionals and social workers to create a friendly and open environment for young LGBT persons, for example by organizing information campaigns. Ministry of Labor does not take such action, since it recognizes that "social workers, as they gain their education, they acquire different skills that enable them to provide adequate help for all individuals and families."

A hospitalized person may freely indicate “next of kin”. If, however, the patient remains unconscious, then most of the time a partner of the same sex is practically deprived of the status of being next of kin and is not allowed to be present during medical treatments, and cannot obtain information about the health of their

59 See http://kobieta.kph.org.pl/.
61 Letter of the Minister of Health of 18 May 2012.
63 Letter of the Minister of Labor and Social Policy of 3 April 2012.
partner. In practice, it is necessary to carry a power of attorney document, entitling a person to obtain medical information about the partner and assist in medical activities.

There are no adequate measures to ensure particular healthcare for transgender persons.

NGOs are not familiar with state entities that carry out reparative therapy. However, any measures taken by the State to prevent the reparative therapy are not known as well. A catholic Foundation 'Light Life' is operating in Poland according to the Law on Foundations. They run a 'Courage' center in Lublin which carries out gay and lesbian reparative therapy. In 2006 the Foundation has been granted a 'Public Benefit Organization' status which entitles them to once a year collect 1% of personal income tax of citizens willing to contribute. The status has been granted by the Ministry of Labor based on their statutory provision that they 'provide aid to persons in difficult social situation'.

There were cases of attempts to convince a homosexual person to undergo psychological tests to "prove" sexual orientation during asylum granting procedure. (case no. 73)

(case no. 73) KPH deals with the case of an Ugandan who in order to avoid persecution in his home country because of his sexual orientation is seeking refugee status in Poland. During the administrative procedure for granting such status, he was required to prove his sexual orientation. To this end, he went to Sex Clinic in Warsaw, where he received a certificate attesting that he is a person of homosexual orientation. The certificate, however, did not contain any information on the basis of issue of such a diagnosis. It consisted only of a medical statement and a statement that it was issued at the request of the patient.

There are no regulations to ensure transgender persons have effective access to appropriate medical services. Most of the research and diagnosis is done in the private sector. The Polish government did not fulfill the obligations contained in the National Action Plan for Women II stage of implementation for 2003-2005, which was the establishment of consultative and diagnostic clinic for transsexual persons. Reimbursement for gender correction procedure is not guaranteed by any regulations. It is uncertain whether obligatory conversion therapy in order to accept a new gender has been discontinued.

There are no specific measures to prohibit imposing a new gender identity on a child without their consent.

ix. Housing

Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

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Poland does not have legislation that explicitly prohibits discrimination based on sexual orientation or gender identity in areas such as sales and rental of real estate, providing loans for the purchase of real estate; recognition of tenancy rights of partner in communal flats; eviction because of sexual orientation and gender identity. In principle, the general rules concerning the sale, rental or credit-funding of real estate, as well as recognition of tenancy rights and eviction do not lead to direct discrimination against LGBT persons. It should be noted, however, that the practice of the courts, in particular with regard to recognition of the deceased partner's tenancy rights, so far has repeatedly led to de facto discrimination against LGBT persons.

Issues of shelter and accommodation in emergency situations are governed by Polish law by the Law on Social Welfare. However, they do not include provisions that would directly address the concerns of LGBT persons. Implementation of the tasks of social welfare is primarily entrusted to entities on the various levels of local government, assisted by the Ministry of Labor. The information available to LGBT organizations, however, shows that so far no projects have been implemented by these entities, both locally and nationwide, nor do they include any action or recommendation in relation to the help for LGBT persons.

Studies on this subject conducted so far do not recognize this category of persons at all. The Ministry assured that never has a homeless person been denied help because of their sexual orientation. The data held by LGBT organizations indicate that the information which would serve to fight discrimination against LGBT persons are not available to real estate owners or tenants. One of the reasons is lack of statutory obligations in this regard. So far, there has not been any public awareness campaign in this regard. These issues are not dealt with in any way by the equality bodies.

To date, programs, including support programs have not been established to respond to the particular risk of homelessness among LGBT persons, especially youth and children. The information held by non-governmental organizations shows that so far the problem of homelessness of LGBT persons is generally not recognized. Research conducted by the State does not include such a category of the homeless or threatened with homelessness, which reflects a complete lack of any actions or recommendations aimed at combating this phenomenon.

The institutions dealing with social welfare have not undergone any trainings that would cover the subject of LGBT youth at risk of homelessness. Ministry of Labor justified the lack of activity in this field with conviction that "social workers, as they are gaining their education, they acquire different skills that enable

66 Among the grounds for discrimination with regard to access to and conditions of using social security and services, including housing services, the AoET only indicates gender, race, ethnic background and nationality.
68 Only Art. 119(2)(3) of the Act indirectly indicates that social workers, when performing their tasks, should counteract practices which are inhumane and discriminatory against an individual, a family or a group.
69 J. Szolajskaja, Standardy usług dla osób bezdomnych w warszawskich placówkach opieki stacjonarnej i półstacjonarnej oraz kryteria różnicujące te usługi [Standards for services provided to homeless persons at Warsaw establishments of full or partial in-patient care and service differentiation criteria] Warsaw 2008.; Julia Wygnańska, Raport o polityce społecznej wobec bezdomności w Polsce [Report on social policy for homelessness in Poland], Warsaw 2006.
70 Letter of the Minister of Labor and Social Policy of 3 April 2012.
71 J. Szolajskaja, Standardy usług dla osób bezdomnych w warszawskich placówkach opieki stacjonarnej i półstacjonarnej oraz kryteria różnicujące te usługi [Standards for services provided to homeless persons at Warsaw establishments of full or partial in-patient care and service differentiation criteria] Warsaw 2008.; Julia Wygnańska, Raport o polityce społecznej wobec bezdomności w Polsce [Report on social policy for homelessness in Poland], Warsaw 2006.
them to provide adequate help for all individuals and families. The observations of non-governmental organizations show, however, that social workers are not prepared to effectively assist LGBT persons at risk of homelessness.

Victims of discrimination can only benefit from the general legal regulations leading to compensation for damage or injury caused by discrimination in housing. LGBT persons may initiate a civil action for damages and compensation of injury. They can also submit a complaint to the RPO if the discriminatory action was on the part of the State. These measures are however not always effective.

x. Sport

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

So far no effective measures have been taken to prevent exclusion from participation in sport because of sexual orientation and gender identity. Homophobia and transphobia in sport is still not regarded as a serious problem that requires commitment from the authorities. No measures have been taken to prevent, fight and punish the use of discriminatory insults in sport, in particular in relation to football events, during which most often occurs this type of activity. Homo- and transphobic hate speech is not an offense under Polish criminal law. There has also been no action to end discrimination against transgender persons in sport and sports competitions. The transgender persons still face obstacles by taking part in sport linked to refusal of recognition of gender preferred by transgender persons (the question of access to the dressing rooms, etc.)

The observations of LGBT organizations show that so far authorities have not taken any actions in support of sports associations and fan clubs in initiatives designed to raise awareness of discrimination against lesbian, gay, bisexual and transgender persons in sports and the condemnation of intolerance against such persons. From KPH’s experience it appears that this is very often due to fear of reaction from the fans.

xi. Right to asylum

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

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72 Letter of the Minister of Labor and Social Policy of 3 April 2012.
73 Letter of the Minister of Labor and Social Policy of 3 April 2012.
74 Letter of the Minister of Sport and Tourism of 4 April 2012.
In the past 5 years, out of 42,573 applications of persons applying for refugee status 17 of them were motivated by fear of persecution based on sexual orientation or gender identity. In year 2011, the authorities granted two transsexual persons a refugee status. In 2012 the first positive decision referring to a gay man from Uganda granting refugee status in Poland has been issued.

Under Polish law, a legitimate fear of persecution based on sexual orientation may constitute sufficient reason to grant legal protection on the Polish territory. In practice, however, much controversy was raised by the interpretation of the immigration term "reasonable risk of persecution", which very often leads to refusal and expulsion of an alien. Officials dealing with such requests so far have not been trained with regard to specific problems of LGBT persons applying for refugee status or asylum. LGBT organizations notice that when the immigration authorities refuse to grant asylum, they frequently rely on the possibility of "internal flight".

In accordance with the relevant provisions, initiation of proceedings on granting refugee status suspends execution of the expulsion decision to the date of final decision. MSW also assured that for the person who is a subject to proceedings on granting refugee status, a decision on obligation to leave the territory of the Republic or expulsion shall not be issued. However, after the conclusion of the proceedings before the Board of Immigration the final decision becomes enforceable. Contesting the decision to the Voivodeship Administrative Courts needs a separate motion for suspension of enforcement of decisions, otherwise it becomes enforceable and deportation procedures begin.

No concrete measures have been taken to ensure that personnel in the centers of immigration, police, medical personnel and NGOs working with immigration centers receive the necessary training and information on issues related to sexual orientation and gender identity. Staff who support foreign asylum seekers have so far not received any special training or information on protection against discrimination for LGBT aliens, including those residing in refugee centers.

xii. National human rights structures

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75 Letter of the Minister of Interior of 30 April 2012.
77 Letter of the Minister of Interior of 19 September 2011.
§ 1. Lodging a complaint shall not suspend the execution of an act or an action.
§ 2. In the event of bringing an action:
1) against a decision or an order – the body which issued the decision or the order may suspend, ex officio or on request of the appellant, their execution in whole or in part, unless there are circumstances determining immediate execution of the decision or order in administrative proceedings, or when a special act precludes the suspension of their execution;(...)
§ 3. After referring the action to the court, the court may, on request of the appellant, issue a decision suspending the execution, in whole or in part, of the act or activity referred to in § 1 if there is a risk of causing substantial damage or results difficult to reverse, with the exception of local legal provision which have entered into force, unless a special act precludes the suspension of their execution. Refusal to suspend the execution of an act or activity by an authority shall not preclude the appellant from bringing an action before the court. It shall also apply to acts issued or taken in all proceedings in the same case.
§ 4. Should the circumstances change, the court may at any time change or cancel decisions suspending the execution of an act or activity issued under § 2 and 3.
Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

The two main bodies that make up the structure of the national human rights protection are RPO and PRT (Equality Bodies). Both bodies are expressly authorized by the equality provisions of the Act to address discrimination against LGBT persons.

National equality bodies have a statutory duty and power to make recommendations on the laws and policies, raise awareness among the public, examine individual complaints, take part in court proceedings. However, due to differently shaped responsibilities and powers, they differ in the action taken and their effectiveness.

National Equality Bodies exhibit some activity in most of areas covered by the Recommendations.

(case no. 77) ROP attended, in person or by representative, several conferences on LGBT issues. As an example, one can indicate the participation of a representative of the ROP and PET in the Conference “Gender under control?” held on April 28, 2012, by the Trans-fuzja Foundation, which was devoted to transgender issues in the Polish and international law.

(case no. 83) Some of the cases where PET intervened:
- Inclusion on the website of the Independent Association of Students of UMK in Torun, the regional organizer of the "Wampiriada", the student blood donation initiative, the information that one of the absolute contraindications to donation is homosexuality
- Wojciech Cejrowski speech at the Catholic University of Lublin, bearing the hallmarks of hate speech,
- action on matters regarding hosting discriminatory content on the websites and message boards
- suspicion of committing a crime of defamation in connection with the publication list of individuals of alleged homosexual inclinations by the Polish National Party
- media reports about the insult and beatings by municipal guards of a male homosexual
- treatment of some blood stations of homosexuality as being equal to drug abuse as a factor disqualifying blood donors
- discriminatory statements of the Vice-President of City Council of Tomaszow Mazowiecki
- interpellation of an MP, in which homosexual men were compared to deviants, and emotional and intimate relationship between them likened to bestiality, necrophilia, and pedophilia
- controversial content concerning homosexuals in sexual education textbooks.
- the practice of sperm banks to exclude homosexuals from a group of potential donors.

xiii. Discrimination based on several grounds

In Polish law there is no explicit definition and prohibition of multiple discrimination. Provisions that prohibit direct or indirect discrimination on the basis of one or several grounds are present only in labor
law (art. 18 3a of the LC), which indirectly introduces this type of discrimination into the legal system. Because of the open catalogue of discriminatory grounds in the LC, this means that this term can cover all cases of overlapping grounds of discrimination. Despite repeated recommendations of members of the Coalition for Equal Opportunities (an informal coalition of over 40 NGOs), no definition and prohibition of multiple discrimination was added to the EA, although some EU instruments contain such references. The practical consequence of the current legal situation is that the outside the field of employment, in proceedings for violation of the principle of equal treatment, victims of multiple discrimination claim violation of only one characteristic protected by law, which results in damage of the claim. Polish law still treats various premises for discrimination separately, as acting independently of each other, not mutually reinforcing and overlapping each other.

The recent 2012 Report on Multiple Discrimination shows that PRT, as the national body responsible for implementing government policy in respect of equal treatment, including anti-discrimination, has not yet adopted any position on the issue of multiple discrimination. Also in the normative acts setting up this body, there is no reference to the obligation of fighting this phenomenon. Similarly, AoHDR does not authorize the RPO to deal with cases of multiple discrimination. The information available to LGBT organizations indicates that this issue was not yet a specific subject of interest of that authority.

Procedures operating in the Polish legal system provide limited redress in the identified cases of discrimination. Only under labor law does the procedure take into account the principle of shifting the burden of proof, making it easier to seek redress for the injury.

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79 Art. 183a of the LC:
§ 1. Employees shall be treated equally with regard to commencing and terminating an employment relationship, employment conditions, granting promotion and access to training aimed at improving occupational competence, particularly irrespective of sex, age, disability, race, religion, nationality, political beliefs, union membership, ethnic background, belief, sexual orientation and irrespective of their employment for a fixed or indefinite period, on a full-time or part-time basis.
§ 2. Equal treatment in employment shall mean no discrimination, in any way, directly or indirectly, on grounds referred to in § 1.
§ 3. Direct discrimination occurs when in a comparable situation an employee, on any of the grounds referred to in § 1 was, is or could be treated less favorably than other employees.
§ 4. Indirect discrimination occurs when as a result of an apparently neutral decision made, criterion applied or action taken there are or could be disadvantageous disproportions or a particularly unfavorable situation with regard to commencing and terminating an employment relationship, employment conditions, granting promotion and access to training aimed at improving occupational competence towards all or a significant number of employees belonging to a group distinguished by any of the grounds referred to in § 1, unless the decision, criterion or action is objectively justified by its legitimate end to be achieved, and the means to this end are proper and necessary.

80 D. Cieślikowska, N. Sarata, Dyskryminacja wielokrotna – historia, teorie, przegląd badań [Repeated discrimination – history, theories, overview of research], Fundacja Fundusz Współpracy, Towarzystwo Edukacji Antydyskryminacyjnej, Warsaw 2012.

Appendix I: Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

(Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers’ Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as “the Convention”) and its protocols;

Recognizing that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognizing that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalization, marginalization, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights (hereinafter referred to as “the Court”) and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a “dominant culture” can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;
Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyze relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analyzed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.
B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimizing such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organizations, political organizations and religious communities.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organizations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organizations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favor of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.
17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalizing same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognized in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor’s pension benefits and tenancy rights.

24. Where national legislation recognizes registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognize nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child’s best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child’s best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in
employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimization.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organization.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social
exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XII. Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

Appendix II. Glossary

This report uses a number of terms and concepts which are defined and clarified below in order to facilitate the full understanding of the report. The definitions are not considered exhaustive. While referring to the list, one should bear in mind that some of the terms may have slightly different meanings in various contexts and in different languages.

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

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82 The definitions come from *Discrimination on grounds of sexual orientation and gender identity in Europe*
– **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 favorably 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.

– **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.

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

**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. 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 a period of 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 LGBT 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 LGBT group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.

**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.
Hate speech against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT 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.

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.

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

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.

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.

LGBT people or LGBT persons is an umbrella term used to encompass lesbian, gay, bisexual, and transgender persons. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

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.

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, heteronormative and gender-binary categorizations. It is also a theory, which offers a critical perspective into 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. The word **transgenderism** refers to the fact of possessing a transgender identity or expression.

**Transsexual** refers to a person who has a gender identity which does not correspond to the sex assigned at birth and consequently feels a profound need to permanently correct that sex and to modify bodily appearance or function by undergoing gender reassignment treatment.

**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.
Appendix III. Compliance Documentation Report

Recommedation CM/Rec(2010)5

„It is recommended that member states:”

1. examine the existing legislative measures and other measures, and engage in their continuous review, collect and analyze appropriate data to monitor and redress any direct or indirect discrimination based on sexual orientation or gender identity;

Was a review carried out of existing legislative measures and other measures that directly or indirectly could result in discrimination based on sexual orientation, or gender identity?

Poland has so far carried out one review of legislative and other measures, which treated the phenomenon of discrimination based on sexual orientation and gender identity in a comprehensive manner. It was prepared by the Government Plenipotentiary for Equal Treatment in the first half of 2012 and covered the area of employment, education, health, access to goods and services and the general model of anti-discrimination policy. Although other State institutions exhibit some activity in this area, however, it concerns only certain aspects of the discriminatory actions. The impulse for taking up this type of activity is, in most cases, a notification submitted by the victim of such discrimination, or publicity by the media or LGBT organizations.

As part of the project implemented by the PRT; "Equal Treatment as a standard for good governance", proposals were prepared for recommendation to the National Action Plan for Equal Treatment, the development of which is one of the statutory duties of the PRT. Recommendations consist of surveys, expert interviews and expert diagnoses based on an analysis of legislation, case law and literature.

Moreover, Polish Equality Bodies analyze selected legal measures and other measures only after receiving an individual complaint about possibility of discrimination. An example would be the interest expressed by Equality Bodies in issuing certificates of marital status for those who wish to marry same-sex partner abroad, or lack of statutory regulation of the legal proceedings to correct gender, which were made public by NGOs. This type of analysis is always done within the course of daily activity of the bodies. Minister of Justice assures that such reviews are performed regularly as a part of reporting on the implementation of international agreements on human rights. These reports deal with LGBT issues, but only to a marginal extent, and do not constitute a comprehensive analysis of the position of LGBT persons.

Are systems for collecting and analyzing relevant data in working order and used to monitor the direct and indirect discrimination on grounds of sexual orientation and gender identity?

83 Apart from public opinion surveys and statistics on hate crimes (see A5 below), such measures should include actions brought before national equality authorities and court decisions.
So far, systems of data collection and analysis carried out by different departments did not provide data on discrimination against LGBT persons. This was a consequence of the lack of legal regulations, which would include the obligation to register such information. The only sources of data on discrimination against LGBT persons is research carried out by NGOs or academic institutions. Only now, as a result of changes in law (introduction of Equality Bodies) first such data bases are being created. LGBT organizations are awaiting the publication of the first analysis, to verify the efficiency of systems and their suitability to monitor discrimination against LGBT persons.

Since 2011, RPO acting as an Equality Body has been obliged to collect data on discrimination and submit annual information on the observance of the principle of equal treatment, including the principle of non-discrimination of LGBT persons. The information provided by the RPO shows that the release of information for 2011 is planned for the second quarter of 2012. RPO, however, holds statistical information, which shows that data is being collected on discrimination based on both sexual orientation and gender identity based on complaints that are filed with the office. Bureau of the other Equality Body - PRT – does not keep this type of registers. PRT also collects data on complaints of discrimination based on sexual orientation received by the Office. Pooled data from 1 May 2009 to 31 December 2010 show that during this period a total of 361 interventions, proposals, letters, and issues were brought to PRT, 5% of which concerned discrimination on grounds of sexual orientation.

Also, statistics conducted by the Minister of Justice (MS) do not list data relating to discrimination against LGBT persons. Because they reflect the wording of legal regulations, which mostly do not mention sexual orientation or gender identity (e.g. lack of homophobic crimes in the list of offenses contained in the Criminal Law). Information provided by the Minister of Justice shows, however, that courts were obliged to carry out the "Charter for statistics on employment discrimination," which takes into account the category of "discrimination based on sexual orientation (category.7.1.)." The analysis of pooled data from the specified MS cards is planned not until July 2012.

The police tool used to collect and process data on crime is the National Police Information System. Yet it is not useful to monitor crimes of homophobia or transphobia. The main obstacle is the fact that, as in the case of statistics of the MS, an integral part of the information provided in the system is to assign each event a suitable legal classification. Due to the current wording of the CrC and the Code of Petty Offenses (CPO)

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86 Letter of the Chancellery of the Prime Minister of 10 April 2012.


88 Letter of the Minister of Justice of 24 May 2012.
that do not provide for homophobic nature of a crime, event, which are in fact a consequence of such a motive are assigned to a general type of crime, which makes the homo- or transphobic motive invisible.

Are there procedures to ensure redress in the identified cases of discrimination?

Effectiveness of existing procedures of providing compensation for damages arising from discrimination is limited. Only on the basis of labor law a discriminated person may use a friendlier procedure that facilitates seeking redress for damages.

Theoretically, the person wronged by discriminatory action may seek redress through the general civil or criminal provisions. In accordance with article 24 of the Civil Code, in the case of breach of personal interest, the aggrieved person may demand financial compensation or payment of an appropriate sum of money to a specific social purpose from the entity who violated those interests, and art. 445 of CC provides that in case of injury or disorder of health of the victim, they have the right to request an appropriate amount of money as compensation for damage suffered. By contrast, pursuant to the criminal law, in case of conviction the court may order, at the request of the victim or other person entitled, a compensation for harm (art. 46 of the CrC).

The above rules do not provide evidence facilitation (in a form of shifting the burden of proof) for victims of discrimination, which means that the burden of showing the damage, its degree, the causal link between the behavior of the offender, and the damage caused by the discriminatory behavior rests solely with the victim. In many cases this results in considerable difficulties in the effective claim for damages.

The exception in this regard relates only to matters of labor law. Pursuant to art. 18 3d of the LC, a person against whom the principle of equal treatment in employment was violated by the employer, is entitled to compensation in an amount no less than the minimum wage. According to jurisprudence of the Supreme Court, compensation is a kind of redress for pain and suffering caused by the discriminatory behavior. In such proceedings, the employer must prove that they did not discriminate against an employee, the burden of proof rests on the employee only if damages they are claiming are greater than the minimum wage. Similarly, in the case of art. 94 of the LC, an employee who suffered disorder of health due to bullying [referred to in LC as ‘mobbing’], may claim the appropriate sums of money from the employer as compensation for damage suffered.

Although the draft law of the equality act provides the possibility of claiming both damages and compensation for breach of the principle of equal treatment, the AOET, call the ‘Equality Act ultimately adopted in 2010, provides in art. 13 AOET only a right to claim pecuniary damages. The impossibility to

89 Judgment of the Supreme Court of 3 April 2008 (Reg. No. II PK 286/07).

90 Letter of the Chancellery of the Prime Minister of 10 April 2012, Proposals for Recommendations to the National Action Plan for Equal Treatment prepared by PET.
obtain compensation means that the equality act in its current form does not guarantee the proper implementation of EU equality directives, which has repeatedly been emphasized by NGOs. This issue became the subject of a speech of RPO to PRT in May 2012.

As a side note it should be added, that none of the Equality Bodies (RPO or PRT) are in capacity to pay compensation to victims of discrimination.

2. ensure that these legislative measures and other measures are adopted and successfully implemented to combat discrimination based on sexual orientation or gender identity, and to ensure respect for human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them.

Were laws introduced against discrimination based on sexual orientation and gender identity in areas such as employment social security and health care, education access to goods and services, including housing.

Legislation that literally names discrimination based on sexual orientation have been introduced only in the field of employment. In other areas identified in this Recommendation, LGB persons are not protected against discrimination based on sexual orientation.

Admittedly, the general prohibition of discrimination arising from article. 32. 2 of the RP Constitution prohibits discrimination for any reason, and therefore also on grounds of sexual orientation, but it is not reflected in the specific statutory regulations. Prohibition of discrimination in regard to sexual orientation was expressed only in the rules governing employment. Both the LC (art. 113, art. 183a, art. 94), AoPELMI (art. 2a, art. 19c, art. 36 section 4 item 3, art. 36 section 5 item e, art. 38, section 2 item 3, art. 40 item 6) AOET (Article 8) contain a prohibition of unequal treatment on grounds of sexual orientation in employment.

NGOs hoped, that the prohibition of discrimination in other areas would be included in the AOET and cover all the grounds for discrimination in an uniform manner, including sexual orientation. Unfortunately, the Act introduced a variety of scopes of protection.

Sexual orientation was not included in the regulations prohibiting unequal treatment in terms of access and conditions for use of social security, services, including housing services, goods and the purchase of rights or energy if they are offered to the public (Article 6 ofAOET), and also health care and education and higher education (Article 7 of AOET). Neither was gender identity.

Lack of adequate protection in these areas prevents effective responses to many cases of discriminatory behavior. On one hand cohabitation by a person applying for social benefits with a partner is used as an argument for treating such persons as jointly running the household (although due to the lack of regulation concerning partnerships and same-sex marriages they are legally complete strangers) and therefore having incomes that do not qualify for granting welfare (case 84).

At the same time, same-sex couples are denied the joint insurance on the same basis as married couples (Case 85), and still they are denied the right to succeed to tenancy rights of the deceased partner (Case 86). Single lesbians, bisexual women and transmen are refused to participate in State reimbursement for assisted reproduction (artificial insemination.) This practice is justified with the need to protect such principles as the best interest of the child or the child’s right to full family.

Therefore, the AOET in its current form is criticized both by anti-discrimination NGOs and Equality Bodies. Allegedly underdeveloped, due to a draft law adopted under time pressure related to legal proceedings before the Court in Luxembourg for failure to implement the five equality directives, and to ignore the comments submitted to the project by a coalition of NGOs.

PRT declared in her statements that no later than 2013 will she make proposals for new legal solutions concerning the anti-discrimination law. It should be also noted that Poland has still not acceded to Additional Protocol 12 to the European Convention on Human Rights (ECHR) prohibiting discrimination in all areas.

Has a comprehensive strategy been implemented, including long-term education and awareness-raising programs, aimed at combating discrimination, biased attitudes and behavior in public spaces and correcting prejudices and stereotypes?

So far, this type of strategy, with regard to long-term education and awareness raising programs has not been implemented. Although various State institutions, take or declare their willingness to take some action in this regard, it is still marginal, and the implementation of recommendations in this area is based to the vast extent on activity of LGBT organizations. The first State action which would merit the title of a comprehensive strategy is in preparation and now it is too early to assess its final shape and the possible effectiveness.

In 2005, the MPIPS (MLSP) developed the Strategy for the Development of Civil Society for the years 2007 - 2013 within the Measure 3.1 "Preventing the risk of social exclusion by strengthening the role and functions of the family and the local community". The strategy provides for "special attention to the right of families and quality of life of its members, particularly children and those who are at risk of social exclusion, which shall be an essential criterion for action in the prevention of social exclusion." In order to implement the Measure, the Ministry is to "support actions to create conditions for development of individuals and social groups based on equal opportunities, equal start of socio-professional life and equal treatment in all spheres of public life, in particular, without discrimination based on sex, race, ethnic origin, religion or belief, age and sexual orientation." LGBT organizations have no information on specifics related to the implementation of the Measure in the area of prevention of discrimination based on sexual orientation.

PRT also plans educational and awareness-raising activities, which relate to LGBT issues. Their implementation is to take place within the framework of three projects: "Equal Treatment as the Good Governance Standard", "Equal Opportunities in Media" and "The fight against discrimination based on

93 See http://m.wyborcza.pl/wyborcza/1,105402,11874035,Rasabardziejechronionanizchoroba.html.
sexual orientation and gender identity." The information available to LGBT organizations shows, however, that the topic of sexual orientation and gender identity in the first two projects will be treated in a rather allusive manner, and the actions of the latter will not be undertaken until the spring of 2013 because of the logistical difficulties associated the European football championships taking place in the summer [of 2012] in Poland.

LGBT organizations had high hopes that the priorities for government action during the Polish presidency of the EU would also include initiatives conducive to implementation of the principle of equal treatment for LGBT persons. The government program prepared for this occasion did not emphasize, however, any issues relating to anti-discrimination. This was the cause of intervention of Coalition for Equal Opportunities, which, however, did not produce any significant effect.

Suspension of the project "Progress, combating discrimination, promoting diversity" within the EU-funded PROGRESS raised large concern among NGOs. Although KPH representatives participated in working group meetings, and also joined in the development of recommendations, which were then to be implemented by the Polish government under the PROGRESS, KPH received neither the definitive text of recommendation or information on projects of Polish government administration based on these recommendations.

The first action of the State, which may constitute a comprehensive strategy is being prepared within the framework of statutory duties of the PRT (Article 22 AOET) National Action Plan for Equal Treatment. At the moment, however, only the stage of development of proposals for recommendation to the Program has been completed, which will then be subject to consultation, with the participation of LGBT organizations. The draft program which was also consulted with the LGBT NGOs provides for separate actions concerning discrimination against LGB persons, which would cover such areas as education, health care, employment or access to services.

3. ensure that victims of discrimination have been aware of and have access to effective legal protection through the national authorities, and that measures to combat discrimination include, where appropriate, sanctions for violations and regulations that can achieve an adequate compensation for victims of discrimination.

Do effective means of legal protection of persons discriminated against because of sexual orientation and gender identity exist on the national level? Are these measures effective, proportionate and dissuasive?

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94 Letter of the Chancellery of the Prime Minister of 10 April 2012.

95 Letter of the Coalition of 12 July 2011.

96 The Coalition gathers nongovernmental organizations combating discrimination. Thus far, the Coalition has repeatedly presented to the Polish authorities and public opinion its positions on proposed amendments to legislation and changes in practices of Polish authorities with regard to equal treatment and combating discrimination.

97 Letter of KPH of 15 October 2010.
In the Polish legal system, effective legal remedies, accessible to persons discriminated against on grounds of sexual orientation, are only available in the area of employment and work. Those provisions do not literally include gender identity, but trans persons should be protected by this law on the grounds of the 2006/54/WE Directive. These include both the conclusion, duration and termination of employment with the employer from both public and private sectors. This protection also applies to persons employed under civil law contracts.

The person against whom the principle of equal treatment has been violated in their workplace on the basis of sexual orientation is entitled to compensation for both non-pecuniary and pecuniary damages. The institution of shifting the burden of proof to the employer facilitates the exercise of these guarantees by the employee.

However, Polish legal system is lacking effective protection of LGBT persons against hate crimes, including hate speech. Due to the fact that existing regulations do not distinguish a homophobic motive of these crimes, the victims can only use general regulations which usually require them to be more proactive in terms of gathering evidence, and in case of conviction of the perpetrator (a rare occurrence, as there is a practice of discontinuing such proceedings by the prosecution (see case No. 1, 2, 3, 4, 5) provide for milder sanctions and penalties.

The person aggrieved by the activity of a public official is entitled to file complaints under the provisions of the CAP and specific regulations governing public administration services. However, as filing the complaint is rarely mirrored in actual initiation of disciplinary action against the public official, the system is virtually ineffective, and therefore rarely used by the persons discriminated against. For instance, the National Judicial Council (hereinafter KRS) may file a request to the Disciplinary Proceedings Representatives for initiating disciplinary action against judges, who have committed an official misconduct (discrimination, tolerating discrimination). However, it has never transpired, that a notice of such behavior of a judge was referred to the KRS.

Legal remedies stipulated by the Equality Act also proved ineffective in practice. The information obtained from the MS shows that 30 compensation for damages cases were received by regional and district courts under EA. The courts concluded 17 cases (9 dismissed, 3 remanded, 1 returned and 2 discontinued), 13 cases remained to be examined in 2012. The RPO agrees with the assessment of such legal regulations: “considering, however, the low number of cases of claims for damages for breaching the principle of equal treatment directed to the courts, it seems that the mechanism of judicial protection of the principle of equal treatment in the first year after the Act was not sufficiently effective.

A form of legal protection of LGBT persons is for NGO to join proceedings for breach of the principle of equal treatment or to institute such proceedings on behalf of victims of discrimination and with their consent (in accordance with the provisions of the Code).

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Are there procedures to ensure that victims aware of legal remedies and provide access to them, even if the violation has been committed by persons acting in an official capacity?

There is a lack of procedures in this regard. The only action that may in any way increase awareness of and access to legal remedies are actions taken by national Equality Bodies, the MS and Attorney General. Their drawback, however, is that materials produced by these institutions are poorly distributed, and information posted on websites are not exposed to potential victims to facilitate their use.

In accordance with article 11 of the AoRPO, the RPO is obliged to examine any complaint addressed to the Office, and also indicate the applicant's rights to the means of action. This request to the RPO is free of charge and does not require a specific form. Its weakness is that it cannot be anonymous. RPO also carries out a limited information campaign on the rights of victims of discrimination. So far, the RPO office has issued two leaflets: "The Human Rights Defender as an independent body for equal treatment", which contains a complaint form that can be sent to the RPO (in Polish, English and Russian), and "Your defender – the Human Rights Defender". Flyers are available at the website of RPO. The RPO also launched a free information hotline, and also allowed to submit requests via the Internet.

Similarly, PRT office provides for the submission of complaints and requests, and also published on its website two brochures containing basic information about discrimination in employment (what is it, how to recognize it, what should a person who feels that they are a victim of discrimination do, including discrimination based on sexual orientation. The Minister of Justice posted on its website information for victims of crime. However, it does not contain any references to discrimination based on sexual orientation. Also the Prosecutor General (PG) has released publication "The rights of a crime victim", which also does not include the perspective of victims who are LGBT persons.

Do these measures include, where appropriate, adequate compensation for the victims?

The existing legal measures provide only limited possibility to effectively receive compensation for victims of discrimination based on sexual orientation. The most effective protection is provided for in the labor law, whose regulations provide for reversed burden of proof and mention sexual orientation as a protected characteristic.

Pursuant to Art. 18 3d of the LC, a person employed on a work contract against whom the principle of equal treatment in employment was violated by the employer, is entitled to damages in an amount no less than the minimum wage for the work. In such proceedings, the rule of reversed burden of proof applies, and it is the employer who must prove that they did not discriminate against an employee. The burden of proof rests on the employee only if the damages they are claiming do not exceed the minimum wage.

Also Article. 13 of AOET, provides the opportunity to claim damages by the person against whom the breach of the principle of equal treatment on grounds of sexual orientation in employment was committed. The Act however does not guarantee the same legal remedies to recover damages for discrimination on grounds of sexual orientation in education, health, access to services, housing and social security.
Besides, according to information obtained from the MS, throughout the 1st year of the Act being in force (2011), courts received only 30 cases of violation of the principle of equal treatment, and so far, none of them ended in favor of the plaintiff.

In the other above-mentioned areas, the victim of discrimination can only try to claim damages through the general civil or criminal proceedings. However, these proceedings do not provide facilitation of evidence for victims of discrimination, which means that the burden of proving that the damage occurs as a result of discriminatory behavior rests solely with the victim. In many cases this resulted in considerable difficulties in the effective claim for damages. Also, none of the Equality Bodies (RPO of PRT) have ability to pay compensation to victims of discrimination.

4. ensure their legislation, politics and practice are governed by principles and measures described in the appendix to this recommendation;

5. ensure, by appropriate measures and actions, that this recommendation, including the Annex, is translated and distributed as widely as possible.

What steps have been taken for the widest possible dissemination of this recommendation and its annex?

So far, few steps have been taken, which sought to spread the Recommendation and its Annex. According to NGOs, content of this document is known only to a small circle of specialists in the subject.

Recommendations have not been disseminated to a wider audience in print. The information held by non-governmental organizations is that it is not available even in public offices. Translated version was included only in the electronic version on the PRT website (where it is hard to find), and also on the RPO website. In addition, information provided by the RPO office indicates that the text of the Recommendation was also made available on RPO profile on Facebook (also invisible). RPO declared that this document would be distributed during the training conducted under the project "Equal treatment as a standard of good governance."

Among the actions taken by other institutions, one can only indicate that on 15 July 2010 the MSZ held a seminar on "International Legislation and LGBT rights", under which the standards in the fight against discrimination of LGBT persons of Council of Europe were discussed, and then in early 2011, the MSZ ordered a translation of the Recommendations and the Annex to the other Ministries. The Recommendation was to be the subject of inter-ministerial meeting of the Committee for Matters concerning the European Court of Human Rights on 28 June 2011. Minister of Justice stressed that the

100 Letter of the Chancellery of the Prime Minister of 10 April 2012.
101 Letter of the Minister of Foreign Affairs of 5 October 2011.
102 Letter of the Minister of Foreign Affairs of 5 October 2011.
text of the Recommendation and its Annex was sent to the libraries of organizational units subordinate to the Minister of Justice and the CZSW.

**Have the recommendations and the Annex been translated?**

In 2010, the Recommendation and its Annex were translated by the MSZ and then communicated to PRT and other ministries. MSZ emphasized however, that the translation was only a draft version. Only in April 2012 an official translation of the document was to be prepared on the basis of the translation draft for publication on the pages the Council of Europe devoted to LGBT issues.

**Were they disseminated in the gay, lesbian, bisexual and transgender community, in the public administration, the law enforcement agencies, including the judiciary and penitentiary system, among national human rights structures (including the Equality Bodies), in the education system, in the healthcare system, among the representatives of employees and employers, public and private sector, in the media, the relevant non-governmental organizations?**

The Recommendation has been sent to the ministries, some government agencies and the national Equality Bodies. NGOs have not reported that the Recommendation and its Annex were in any way distributed in other areas identified in this Recommendation.

**Appendix to Reccomendation CM/Rec(2010)5**

**DOCUMENTATION REPORT POLAND 2012**

I. Right to life, safety and protection from violence

a. „Hate crimes” and other hate-motivated crimes

1. Member States should provide effective, prompt and independent investigation into alleged cases of crimes and other incidents for which there is reasonable suspicion that the motive of the perpetrator was a sexual orientation or gender identity of the victim; countries should also ensure that the particular attention should be paid to criminal offenses and incidents of this kind, when there is suspicion that they have been made by law enforcement officers or other persons of the public authority, the State should also ensure that the perpetrators of acts of this kind are held liable and, where appropriate, punished, in order to avoid impunity.

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103 Letter of the Minister of Foreign Affairs of 6 April 2012.
104 See Explanatory Memorandum for definitions of “hate crimes” and “hate-motivated incidents”.

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1.1 Does the training of police officers ensure that they are aware of the need to make special efforts in an efficient, fast and independent manner to examine any and homophobic or transphobic connotations such crimes or incidents, particularly in cases of violence?

The police management have taken action to increase the awareness and development of appropriate attitudes of officers towards minorities. It is worth noting that the presence of LGBT issues in training for the police is more significant than in any other area covered by Recommendation. This is mainly due to the activity conducted by the police management in this area, in particular the network of police Commissioners for the Protection of Human Rights (PPdOPC). Nonetheless, lack of evaluation makes it impossible to determine clearly how the content of training courses translated into a change of attitudes and working practices of the average policepersons. Police training programs at different levels (basic training "Program for the eradication of hate crimes for law enforcement officials," the workshop "Human Rights in police Management" or training for investigative services) include, however, according to KPH, not enough information on the appropriate conduct on suspicion of committing homo/transphobic crime.

There is still a lack of targeted trainings covering exclusively LGBT issues. In the absence of appropriate procedural arrangements, possible changes in police attitudes do not translate well on the whole system.

Since 2009, a training program dedicated to issues of hate crimes "Program to combat hate crimes for law enforcement", has been conducted in cooperation with the ODIHR OSCE. The training program covers the issue of recognizing hate crimes, the proper conduct of the process of detection and collection of evidence in the ongoing criminal investigations, the proper response to this type of crime and prevention of such incidents. The program also includes the subject of LGBT persons (it is not known to what extent). Trainings included in the program are cascade-like - first at the national level for trainers and subsequent one-day training for officers at a local level.

By 30 April 2011, 64 officer trainers had been trained at the central (national) level, and by the end of 2011 about 36000 policemen were trained at the voivodeship level. Trainings will be conducted until the beginning of EURO 2012, and were to include these officers, "who by the nature of the performed tasks encounter or potentially may encounter hate crimes." In connection with the program, the publication "Hate crimes. Trainer’s Guide" was issued as well as leaflets containing

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107 Letter of the Minister of Interior of 30 April 2012.
the main definitions and rules of conduct and catalogue of the most common symbols of hate in Poland. Trainer's Guide contains a definition of homophobia, as well as graphics "no faggotry", which is most prevalent in Poland, a symbol relating to homophobia.

It addresses such issues as police response to an incident motivated by hate, guidance on procedures for investigations and recommendations to the treatment of victims. Examples given in the guide include crimes committed because of victim's sexual orientation. In 2010 KPH, along with the police, established the project "Out and safe" designed to raise the legal awareness of LGBT rights in the area of victim’s rights in case of crime, committed on homophobic grounds. On 17-19 November a three-day workshop was held, attended by representatives of the police for protection of human rights (PPdOPC). In 2011, there were several meetings with representatives of LGBT organizations.

Since 1 July 2011 during the recruitment process for police candidates, questions have been asked relating to attitudes towards LGBT persons. These questions are to verify the "candidate's openness to diversity, multiculturalism and tolerant attitude towards other persons." Examples of questions sent in by PPdOPC indicated: "How would you reacted if a person working with you said that they are of a different sexual orientation?" And "How would you responded if you discovered by accident that the disliked person cooperating with the you is of a different sexual orientation?". However, there is no information on the consequences for the person applying for admission to the police who provided answers to these questions indicating a high level of prejudice.

The correspondence between KPH and MSW shows that the content relating to LGBT issues is also addressed in basic training for police officers, which is reflected in the use of a guide "Serve and protect." This material contains dozens of cases depicting various situations, including the situation of police approach to a person leaving a gay club. The use of a guide is mandatory. Also obligatory workshops for managers "Human Rights in police Management" contain references to LGBT issues. To date the program has trained 500 police “managers”. The workshop includes an exercise showing the situation of a police officer, whose colleagues wrote the word "faggot" on his locker. This exercise is designed to deliver a step by step solution to the situation and to assist a police officer.

At present, anti-discrimination guide "Anti-discrimination measures in units of the Police" is being prepared together by the police and NGOS, under the auspices of the RPO. Non-governmental organizations were invited to contribute to the manual and the preparation of texts about given group exposed to discrimination. KPH has joined the editorial staff and prepares a study on LGBT persons.

109 Letter of the Minister of Interior of 30 April 2012.
In practice, according to information received from the Trans-fusion Foundation, running the police training on gender identity, the implementation of training on this subject often face serious difficulties. As an example, the Foundation gave a behavior of higher rank officers who discourage their subordinates to take these issues with all seriousness. However, it seems that the situation is improving. At a meeting with representatives of human rights organizations on 14 June 2012 in the RPO office a new anti-discrimination handbook was presented, which also has to deal with transgender issues including the introduction of contact with transgender persons who use unofficial “transCARD” – a document issued by the Trans-fusion Foundation for persons presenting an alternative image to the facts reflected in the identity card or a passport. This does not change the nationwide situation on the police being unprepared to work with transgender persons. Trans-fusion Foundation is in the process of conducting a criminal case in which the injured person filed a subsidiary complaint against the conduct of the police (bullying in the form of ambiguous questions and innuendo about the sexuality of the victim and her partner).

1.2 Are there independent and effective tools to receive and study reports or incidents of hate crimes, allegedly committed by law enforcement agents, especially in cases where sexual orientation or gender identity is one of the motifs?

There are no separate tools for the preparation and examination of reports of hate crimes or hate-motivated incidents allegedly committed by law enforcement officers (mainly the police and municipal police), and the cases referred to by KPH show that the submission of such declarations by generally applicable regulations in practice is ineffective (Case No. 1, 2, 7, 8, 9).

The submission by the victim's request for disciplinary action against an officer who has committed such an offense, usually results in refusal to initiate such proceedings by his supervisor, or ends without any indication of violations of duties. Sometimes taking such action may involve the risk of accused officers submitting a notification of committing a crime by a person injured to their detriment (e.g., a charge of assault on an officer or destruction of public property). Given the difficulties of proof and rarely any witnesses to the incident, this type of operation carries the risk of a person injured being held unjustly criminally liable (Case No. 7). Numerous such cases have been reported to KPH in 2011 – unfortunately most of them have not been properly investigated due to lack of evidence and difficulties to contact victims.

A similar situation takes place in the case of prosecution proceedings initiated by the reporting of the crime. Both mechanisms, a fact which has been repeatedly stressed by non-governmental

112 See http://transfuzja.org/pl/artykuly/artykuly_i_opracowania/relacja_ze_spotkania_nt_dzialan_antydyskryminacyjnych_w_jednostkach_policji.htm.
113 On account of the delicate nature of the case and respect for the aggrieved persons, the description of the case was excluded from this report.
organizations, are inefficient (Case No. 1, 2, 9).

Since 2010, an Independent Body for Complaints has operated by the RPO, which has monitored the improper actions of the police. Complaints filed to the RPO are monitored by the police PPdOPC. So far, however, there is no information on the effects of that body, particularly in the context of LGBT issues.

It is worth noting that awareness of the ineffectiveness of these procedures, particularly when the perpetrators are police officers, further reduces the incentive for victims of homophobic crimes to take any action. KPH studies show that in 0.4% of cases of physical violence and 0.6% of cases of verbal violence where offenders were police officers or municipal guards. Given that only 9.7% of victims reported a violent situation to the police, means that we are dealing with a serious problem that continues to remain invisible.

Poland has not yet introduced the possibility of "notification to third parties," 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.

The police introduced an Early Intervention System, whose role is to eliminate irregularities that occur in the behavior of police officers requires disciplinary action or referral to prosecutors. It is not known whether this system has already been implemented.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

2.1 Are there any legal measures to combat "hate crimes" and other incidents motivated by hate?

These types of legal measures are in force in the Polish legislation. They are a consequence of experiences of WWII and genocide committed by the Nazis and are all codified in the chapter called ‘Crimes against mankind’. Hate crimes were codified in the Polish CrC and include the following categories of offenses prosecuted ex officio, by way of criminal proceedings:

- Destruction by killing or serious injury all or part of a national, ethnical, racial, political, religious group or groups with a different perspective (art. 118 CrC),

- Committing a serious persecution of the population for reasons recognized as impermissible under international law, in particular on political, racial, national, ethnic, cultural, religious basis or

because of lack of religious beliefs, worldview, sex, resulting in deprivation of fundamental rights by taking part in a mass attack or any one of repeated attacks against these groups of the population, taken to implement or support the policy of a State or organization (art. 118 of the CrC),

- The use of violence or threats towards a group of persons or a particular person because of their national, ethnic, racial origin or political, religious beliefs or because of their lack of religious beliefs (art. 119 CrC),

- Public provocation to commit an act specified in art. 118, art. 118a, art. 119, or the public preaching of the offense specified in these regulations (article 126a of CrC),

- Failure to properly control a person, by allowing the act specified in art. 118, art. 118a, art. 119, art. 126a be committed by a person under the effective authority or control of the perpetrator (Art. 126b CrC),

- A public promotion of fascist or other totalitarian system of government or to incite hatred towards national, ethnic, racial, religious groups or because of lack of belief (art. 256 § 1 of the CrC),

- Producing, recording, or importing, acquisition, storage, possession, display, transport or transfer to distribute in print a recording, or other object, containing the content set out in art. 256 § 1, or which conveys the symbolism of fascist, communist or other totalitarian systems (Art. 256 § 2 of the Criminal Code).

- Publicly insulting a group of persons or a particular persons because of their national, ethnic, racial, religious affiliation or because of its lack of religious beliefs, or violation person's physical integrity for these reasons (art. 257 CrC).

Do these measures include a) sexual orientation b) gender identity as a possible motive of these crimes or incidents?

These measures do not mention sexual orientation or 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 homophobic and transphobic crimes. Despite repeated appeals by the NGOs, the government for many years consistently has been avoiding legislative action in order to include sexual orientation and gender identity to the catalog of reasons penalized within this category of crimes.

The government and its individual representatives have repeatedly submitted statements indicating the need for changes in this regard. They concerned, however, only a prerequisite of sexual orientation. In the sixth RP regular report on the implementation of International Covenant on Civil and Political Rights for the period 2003-2008, in section 281 the government states that

"after considering the recommendations of the Committee Against Torture, the Prosecutor's office took the position that it would be reasonable legislative initiative aimed at amending art. 256 CrC and art. 257 by criminalization of incitement to hatred or intolerance against persons of different sexual orientation, as well as insulting groups or persons because of their sexual orientation. If an action to amend the CrC is taken, Recommendation No. 19 of the Committee Against Torture for the need for criminalization "of hate crimes (...) based on sexual orientation" will be presented to committee preparing the amendment to the CrC and the Code of Criminal Procedure. Despite this commitment there were no legislative changes, and the Director of the State Prosecutor's Office, who originally expressed the view that was a basis for the statement of government expressed in the report, eventually withdrew from the above statement, declaring it "outdated". 

The MS does not see discrimination because of homophobic and transphobic motifs as a threat to "common goods" which would argue for their inclusion in the catalog of hate crimes. These statements are contrary to the results of research carried out by NGOs, which indicate that the psychological violence based on homophobia is experienced by 51% of non-heterosexual persons, whereas 22% experiences physical violence.

Non-heterosexual or transgender persons who wish to seek legal protection are forced to use general criminal regulations that provide for more lenient penalties for acts which, if trailed under hate crime laws would be threatened with stricter liability. In some cases, they face procedural obstacles in the form of filing a private indictment.

It is worth noting that A trainers guide developed in 2010 by the MSZ used to train police officers in the field of hate crimes included in the definition of such crimes also one based on sexual orientation. This is another proof of the lack of a coherent policy in this area.

The Sejm is currently examining two separate draft laws to amend the regulations regarding hate crimes contained in the CrC. The project of those drafts was prepared by NGOs and extends the catalog of hate crimes based on sex, gender identity, age, disability and sexual orientation.

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117 Letter of the Minister of Justice of 17 November 2011.
119 E.g. pursuant to Art. 118 of the CrC, the killing of a member of a national, ethnic, racial, political or religious group or of a group of persons with a definite philosophical conviction is subject to a penalty of a minimum of 12 years’ imprisonment, whereas the killing of a person motivated by its actual or alleged non-heteronormative sexual orientation or transsexuality would be punishable under Art. 148 of the CrC, which for the killing of a person imposes a penalty of imprisonment for a minimum of 8 years.
Proposals for such changes had been also made in the previous term of the Sejm. The project was not adopted because of the failure to complete the legislative process by the expiry of the term of the Sejm. It is however doubtful whether the current political climate will allow the adoption of the law in the above wording. The latest debate on the amendment of provisions of hate crimes in the CrC, which would also cover the homophobic nature of such acts was an expression of the current political atmosphere in parliament (Case No. 18).

2.2 Do legislative measures provide that discriminatory motives related to (a) sexual orientation and (b) gender identity can be considered as an aggravating circumstance in determining the sanctions?

Due to the fact that the Polish criminal law does not provide for hate crimes committed on grounds of sexual orientation or gender identity of the victim, this motivation does not constitute aggravating circumstance. Although the MSW asserted in its letter that article 53 of the CrC, indicating the rules of imposing the sentence and regulating its severity, permits the inclusion of homophobic motivation of the perpetrators and may constitute the basis for adjudging the higher sentence as a motivation that is considered ‘highly morally detrimental’. Although the wording of this provision in fact provides a basis for such an interpretation, NGOs are not familiar with the practice of Polish courts, affirming such application.

3. Member States should adopt appropriate measures to encourage victims and witnesses of crimes and other incidents of hate crimes committed on grounds of sexual orientation or gender identity of the victim, to report such incidents; to this end, Member States should take all necessary steps to ensure that the structure of the justice system, including the judiciary service possess necessary knowledge and skills to identify such crimes and incidents and to provide the victims and witnesses with proper care and assistance.

3.1 Has simple and clear definition of a „hate crime” on grounds of a) sexual orientation b) gender identity, been disseminated to the public?

No legal definition of hate crime and the fact that the current criminal provisions do not include sexual orientation and condition of gender identity as potential motives of these crimes cause lack of action on the part of the State to disseminate the definition in the wording arising from Recommendation of the Council of Europe. NGO’s solely carry the weight of taking up such actions. However, the definition of hate crimes including the sexual orientation prerequisite is used for the

121 E.g. via police websites or leaflets distributed in local communities.

71
Due to the "Program to combat hate crimes for law enforcement" and materials for the trainer drawn up for the purpose of assisting its implementation, a definition of hate crimes is used which includes a prerequisite of sexual orientation. Attention should be drawn to the fact that in the guide for the trainer definition of homophobia is also quoted. It is not completely correct, as it covers the instances of transphobic behavior, which from a practical point of view can be its advantage, as it does not mention transphobia separately.

In 2011 the association "Never Again" (Nigdy Więcej) along with the police prepared a booklet containing the definition of hate crimes, which were distributed in all the police headquarters. It is not known whether the definition in the leaflet also contained a reference to sexual orientation or gender identity.

3.2 Do training programs and procedures ensure that the police and justice system are equipped with the knowledge and skills necessary to identify such crimes and incidents, and ensure that victims and witnesses receive appropriate help and support?

The training programs and procedures used by the police and justice system are only beginning to gradually cover LGBT topics and at present do not provide relevant knowledge and skills to ensure effective support in this type of crime and its victims and witnesses.

Regarding training for the police - see point 1.

It should also be noted that at present there is no system dedicated separately to assistance to the victims of hate crimes within the police.

Justice system begins to gradually include LGBT topics in a training program implemented under the KSSiP, which is responsible for the training of future judges and prosecutors. In 2010 as a part of nationwide trainings KSSiP organized a two-day training "Legal and criminal aspects of combating the phenomenon of discrimination on grounds of race, ethnicity, religion, sexual orientation or gender identity. Forensic, criminological and legal aspects of human trafficking", which was attended by 100 persons. In addition, since 2009 the legal trainees have participated in other national and international training courses on anti-discrimination law. However, LGBT organizations have no information that would allow to determine the extent to which these training programs discuss LGBT issues.

In 2012 KSSiP has began a project of one-day training on human rights, which are assumed to take

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124 According to the definition of homophobia contained in the material, it is an unjustified fear of and aversion to homosexuality as well as to homo-, bi- and transsexual persons, based on prejudices. [in:] Przestępstwa z nienawiści. Materiał pomocniczy dla trenera [Hate crimes. Teaching aid], Warsaw 2010, p. 30.
place in all appeal court regions and reach all judges of courts of law in Poland (not including prosecutors). The problem of discrimination based on sexual orientation is to be discussed on the example of the judgments of the ECtHR and national courts: Kozak v. Poland (judgment of 2 March 2010, Application No. 12 102/02), Schalk and Kopf v. Austria (judgment of 24 June 2010, complaint No. 30 141/04), judgment of the District Court in Zlotow (judgment of 29 December 2010, IC 118/10) and the District Court for Mokotów District in Warsaw (judgment of October 13, 2010, IC 1447/10). This project is, however, at the initial stage of implementation.

3.3 Do training programs and codes of conduct for the police and judiciary systems ensure that LGBT persons are treated without discrimination and with dignity, so as to provide a sense of security when reporting hate crimes and incidents motivated by hatred, both as victims and witnesses, in connection with their sexual orientation gender identity?

Although training programs and codes of conduct for police and justice begin to gradually sensitize for the need for non-discriminatory treatment of victims and witnesses of crimes and incidents motivated by hatred towards LGBT persons, a valid standard is inadequate and does not provide security for reporting such crimes.

Publication "Hate Crimes: trainer’s supplementary material" used by the police to implement the "Program to combat hate crimes for law enforcement officials" includes the issue of dealing with victims of hate crimes. Codes of Conduct of the police and municipal police contain regulations, which theoretically should ensure implementation of the Recommendation in this area if properly interpreted. The police are obliged under art. 14 § 3 of the police Act125 to respect human dignity and respect and protect human rights in the course of official duties, and pursuant to § 4 of the Rules of Professional Conduct of police Officer126 to respect human dignity and respect and protect human rights, in particular by prohibiting degrading treatment. Pursuant to § 6 of the Rules of Professional Conduct of police Officer, dealing with persons should be characterized by kindness and fairness, excluding racial, ethnic, religious, political, worldview related and other prejudice.

Additionally, according to art. 12 section to 1a of the Act on Municipal Guards (MGA),127 Municipal Guards in the course of the on duty are obliged to respect human dignity and respect and protect human rights. In accordance with art. 27 item 5 MGA the responsibility of the Guard of is to maintain courtesy and kindness in dealing with citizens. The practice of performing the duties with regard to LGBT persons, however, differs significantly from the guidelines contained in these normative acts.

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125 Police Act of 6 April 1990 (unified text: Journal of Laws No. 287, item 1687, as amended).
A survey conducted by KPH, shows that only 9.7% of victims reported violent situations to the Police. One of the main factors that makes it difficult to report the crime is the belief of the victim of negative attitudes of the police towards LGBT issues, associated with the fear of disclosure of sexual orientation, lack of faith in the efficacy of the police in such cases, the fear that the police would not treat the matter seriously, and fear of aggression and ridicule on the part of officers and bad treatment. Such a low percentage of applications indicates that in Poland this serious problem is completely invisible to the police, aid institutions, government, and often of to the relatives of victims, as the victims are afraid not only to report the violence suffered from the police but also to even talk about it.

In the case of the judiciary system, the MS pointed out that these bodies do not have any specific regulations relating to this issue.

3.4 Are there police units designed for the investigating crime and incidents connected with sexual orientation gender identity?

There are no such units and there no plans to establish them, The MSZ, responsible for the Police, explained that such solution would cause unnecessary difficulties of moving the victim to a remote police station.

According to the Minister, "appointment of such units could prove to be unfounded, due to the necessity of transporting the victim to a remote police station which in view of secondary victimization could become the next painful experience of potential victim” . Therefore, investigating crimes and incidents connected with sexual orientation and gender identity is a duty of every investigation unit of the police.

3.5 Are there special police liaison officers responsible for keeping contact with local LGBT

131 Letter of the Minister of Interior of 5 October 2011.
132 Letter of the Minister of Interior of 5 October 2011.
133 Letter of the Minister of Interior of 5 October 2011.
Since 2004, the PPdOPC network operates within the structures of the police who are also responsible for maintaining contacts with the local LGBT community.

At central level, the network is coordinated by the Human Rights Plenipotentiaries of the police Commander in Chief, while in the field 17 Plenipotentiaries of Voivodeship Headquarters of police assisted by five Human Rights Plenipotentiaries in police schools perform their tasks. Their duties include, among others, initiating cooperation and maintaining constant contact with institutions and NGOs that may assist the police in the protection of human rights. These contacts are also maintained with organizations representing local LGBT community. Their representatives have the opportunity to contribute to conferences and training courses for police officers, such as joint implementation of the "Out and Safe" project by the KPH and the Police, addressed to the victims of hate crimes. Several NGOs have agreed to cooperate in the implementation of local training under the program to combat hate crimes for law enforcement officials. According to information received from these organizations, "although [they] made a declaration of cooperation and willingness to co-run trainings, none of them performs the action, and the reasons are no information on the possible inclusion in the training of the Police, late transmission of information about opportunities to engage in ongoing activities and high costs of traveling to the venues of activities and which are not reimbursed by the organizers. "The effectiveness of the Plenipotentiaries, however, is affected by the fact that they have limited authority to force the implementation of systemic changes at the national level of police management. Such changes require acceptance by the Chief of police each time. This acceptance is largely dependent on the calculation of the political consequences of that decision.

3.6 Is there a system of anonymous complaints or complaints on-line, or using other means of easy access, which enable third parties to report incidents to gather information about the nature of these incidents?

No such system exists.

There is a lack of systemic solutions relating to the anonymous information. According to § 8 point 1 of the Regulation of Council of Ministers of 8 January 2002, complaints and requests not containing name and address of the claimant are not admitted. Only if such information bears hallmarks of a notification of a crime or indicates the possibility of offense prosecuted ex officio, it
is subjected to verification.

A proposal to create such a system was a joint initiative of the KPH and the police under the project 'Out and Safe', which was addressed to the victims of hate crimes. One of its tasks was to enable the collection of notification of crimes motivated by homophobia and transphobia. Attempts to create a tool that helps monitor such incidents, however, failed because of an unfavorable opinion of an MSW lawyer (legal impediments to the collection, processing and storage of sensitive data by the MSW and the ban for the police and Prosecution on sharing the details of pending proceedings to other parties. RPO made available on its website a module for submitting complaints and requests. It contains, however, the requirement to provide personal information. Their absence results in a refusal to register the complaint.

4. Member States should take appropriate measures to ensure the safety and dignity of all persons in prison or otherwise deprived of their liberty, including lesbian, gay, bisexual and transgender persons and in particular to adopt protective measures against physical violence, rape and other forms of sexual harassment, both from other inmates and employees, also measures should be taken that would ensure adequate protection of and respect for gender identity of transgender persons.

4.1 Do training programs and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination because of their sexual orientation or gender identity?

The training programs and codes for prison staff do not address LGBT issues specifically. For this reason they cannot to guarantee non-discriminatory treatment of prisoners on grounds of sexual orientation or gender identity.

It is hard to assess the amount and quality of knowledge that is disseminated during those trainings. Information received from the CZSW shows that within the framework of the training of penitentiary staff (psychologists and educators) knowledge about discrimination based on sexual orientation is disseminated. It is not known how the subject is discussed at these classes. Also, during the organization of courses for the position of teachers and senior teachers, "issues of physical and mental violence, including the behavior resulting from sexual orientation, gender identity are discussed in detail and trained in a workshop." Also in this case, there is a lack of detailed information on the form, content or conduct of such workshops.

The current EPC, contains only general references to the obligation of humane treatment and
respect for the dignity of detainees (art. 2 of the EPC). At no point does it refer directly to the prevention of discrimination based on sexual orientation or gender identity. Similarly, in the 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 sexual orientation and transgenderism 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. Eloquenty, however, in a recent letter received by KPH, a prisoner specifically requested – in the case of an answer - to not write a full name of the Association but rather just first letters so as not to reveal that the prisoner may correspond with the organization dedicated to anti-homophobia ("if possible, please mark the envelope only with acronym "KPH" - due to the place where I currently live").

The problem of such discrimination also applies to minors in detention centers. As a result of signals received by the RPO on the use of discriminatory practices against girls staying in a hostel and juvenile correctional facility in Falenica district of Warsaw, a visit was carried out in this institution. Objections related to the attitude of staff to pupils presenting with behavior evidential of lesbian sexual orientation. Visiting team had concerns in particular about the provision in the assessment system, under which the pupil can have reduced mark for "the practice of sexual behaviors (visiting at night, (...) writing love letters to each other)." RPO decided that such a practice is unacceptable, and Director of the facility was required to implement the appropriate changes in this regard.

4.2 Are there effective measures to minimize the danger of physical assault, rape and other forms of sexual exploitation, including effective procedures for disciplinary or criminal liability of those responsible, including the lack of supervision?

Legal regulations require the administration of the prison to ensure the safety of LGBT prisoners while serving their sentence. In practice, the effectiveness of such measures depends on the decision of the Director of the particular prison or detention center.

Convicted person is entitled to require the administration of a correctional facility to take appropriate steps to ensure their personal safety while serving the sentence. On the other hand, the convict is obliged to immediately inform the supervisor about emerging threats and to avoid these hazards (art. 108 EPC). The observations of the actions of the penal system in Poland show that undertaking actions aimed at providing special protective measures to LGBT convicts is always the result of a corresponding decision of the Director of the facility. These activities can include for

141 Regulations No. 1/2010 of the Director General of the Prison Service of 18 October 2010 on the ethics framework of the Prison Service officers and workers [Regulamin Nr 1/2010 Dyrektora Generalnego Służby Więzienne z dnia 18 października 2010 r. w sprawie zasad etyki zawodowej funkcjonariuszy i pracowników Służby Więziennej].
142 Letter of 20 December 2011 from S.G. to KPH.
143 Letter of the RPO of 9 June 2010.
example such location of prisoners to minimize the risk of discrimination against LGBT persons by the persons involved in the life of prison subculture.

In confirmation of this situation a conversation with Jakub Jańczuk, a psychologist with Bialske prison in the Penitentiary Forum can be cited: "In the big [prison] anonymity is greater and so is the likelihood of homosexual relationships. In a smaller prison, like ours, it is more hidden, a reason being the ostracism of homosexuals. After coming out there is a threat of being assaulted. Of course, you can prevent these situations, but you need knowledgeable prison staff and a very good, cooperating team. (...) Sometimes homosexuals come to our facility. Recently we have accommodated such a prisoner. The prisoner got a suitable cell, and he was observed. The decision of imprisonment was worked through by the whole team. A homosexually oriented person displays a characteristic feature and it is possible to notice. Sometimes it is a gesture, a look. I must admit that never any of the inmates have directly admitted their sexual orientation." 

3.3 Are there independent and effective tools to receive and study reports of such offenses by prison staff?

An imprisoned person can submit a complaint and request according to general rules. However, due to the large stigma on non-heterosexual and transgender persons in prisons, the convicts do not take advantage of these regulations in the event of discrimination based on sexual orientation or gender identity.

In accordance with art. 102 of EPC a convicted person has the right to submit petitions, complaints and requests the authority competent to consider them and present them, in the absence of third parties, prison administration, heads of organizational units SW to a penitentiary judge, prosecutor and RPO.

An argument for such assessment is a conversation with Jakub Jańczuk: “I must admit that never any of inmates have directly admitted their sexual orientation.”

3.4 In the case of transgender prisoners, are there procedures to ensure respect for the gender identity of an individual in relation to interactions with prison staff, such as visual inspection of the body, especially if you decide to place the offender in male or female prison?

There are no provision for the transgender prisoners and their functioning in Polish prisons. Only general rules apply.

The knowledge of the Trans-fusion Foundation shows that in the absence of adequate regulations, transgender persons are put in prison accordingly to their legal status, but they may apply for special treatment, which should result in placement in a separate, single cell. Due to the lack of

appropriate regulations such treatment - which does not, however, constitute a good practice, because of the stigma in the prison community - depends only on the authorities of the institution. These institutions tend to favor those who are in the process of gender adjustment (especially in its advanced stage).

5. **Member States should ensure that all relevant data on the prevalence and nature of discrimination and intolerance based on sexual orientation or gender identity were collected and analyzed, in particular, on crime and other incidents of hate crimes related to sexual orientation or gender identity.**

5.1 **Are there studies on the nature and causes of hostile and negative attitudes towards LGBT persons, aimed at developing an effective policy to combat these phenomena?**

Research on these issues exists and is publicly available. In the most part, however, they were executed by NGOs. State actions in this regard were limited only to ordering a study on the situation of sexual minorities in Poland in 2008, and the preparation, as part of the PRT project "Equal Treatment Standard of Good Governance" a study, which includes this issue. In May 2012, PRT has published proposals to the National Action Plan for Equal Treatment, which is currently in consultation with different environments. It also includes issues whose implementation could, to some extent, contribute to implementation of the Recommendation of in this area.

In 2008 Ministry of Labor commissioned to carry out research for the European Year of Equal Opportunities for All "The situation of sexual minorities in Poland in the light of empirical research." In December 2009, a book was published titled "Marked - sexual minorities in Poland - report for 2008", published by the Institute of Sociology, University of Warsaw, edited by prof. Ireneusz Krzemiński. At a later stage – problems with dissemination occurred and the publication was finally not widely disseminated.

The information obtained by the RPO shows that "to date of the RPO office did not carry out research into the nature and causes of hostile and negative attitudes towards LGBT persons, and also into the level of social acceptance, or hostility against LGBT persons." PRT has taken first steps towards the realization of this recommendation. As part of the project "Equal Treatment Standard of Good Governance" a "Report on the analysis of data already existing discrimination against the LGBT community in Poland" and "Tabular report of quantitative research," were developed which also includes data relating to LGBT persons. However, due to the fact that both studies will not be made public until the end of 2012 is not currently possible to assess their content and unambiguously determine whether they can be used to possibly develop such a policy. It should be noted that is it the first such initiative taken up by the government.

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147 Letter of the PET of 10 April 2012.
The results of studies carried out by non-governmental organizations are available free of charge, both in print (distribution at conferences, meetings) as well as digitized versions on the web pages. Issuing subsequent publications is followed each time with the organizations taking action to make printed copies for the various State agencies. KPH has assigned an ISBN number so that the publications issued by the organization must be stored by public libraries.

5.2 Is there regular research on the level of social acceptance / hostility towards LGBT persons?

Research on the level of social acceptance or hostility towards LGBT persons conducted since 2011 by Public Opinion Research Centre (CBOS) and slowly becomes regular. They are also accompanied by research conducted by NGOs and research institutes which carefully analyze the phenomenon of homophobia within the assessment of social situation. The studies conducted so far show that the attitude of Poles towards gay persons is relatively stable. Most of the population still does not give explicit consent for gay and lesbian presence in public space, and sees homosexuality as a deviation from the norm. Over the past few years, however, small changes have become noticeable, indicating the direction of increasing tolerance towards LGB persons.

Research on attitudes toward LGB persons are carried out by CBOS, a State budget unit (technically it is a foundation over which the Prime Minister oversees). In 2010, CBOS published a research report on attitudes towards gays and lesbians, which corresponds, in some places, the CBOS survey of 2008, 2005 and 2001. The report reveals that: 1) 24% of respondents know a homosexual person, 2) 64% of respondents do not accept gays and lesbians, while 30% think it should have the right to do it, 3) 64% of the respondents believe that gay couples should not have rights to show their lifestyle in public, while 29% expressed the opposite view, 4) 44% of those taking part in the survey say there are professions which should not be performed by gays, and 36% believe that there are professions which should not be performed by lesbians 5) 51% of economically active respondents said that in their workplace a homosexual person would be treated the same way as other workers, and 27% that they would get the worse treatment, 6) 45% of respondents think there should be a law that would allow homosexuals to marry, while 16% would not mind 8) 89% of respondents opposed the idea of children being adopted by homosexual couples, only 6% of the respondents would accept it 9) 42% of respondents think that homosexual persons should have the right to have sex, but 37% are in favor of a ban on sexual relations between persons of the same sex, 10) 86% of respondents believe that homosexuality is a deviation from

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148 The website of the Lambda Warsaw Association containing a directory with the results of research carried out since the 1990s: http://www.lambdawarszawa.org/component/option.com_docman/itemid.13/


the norm, with 63% of persons think that it should be tolerated, and 23% that it should not, 8% of respondents considered homosexuality as something normal.

Non-governmental organizations also consistently have been carrying out research on the social situation of LGBT persons in Poland for many years now. So far, NGOs have prepared five reports which relate to the issue of violence motivated by homophobia. They are carried out periodically since 2000. In addition to these studies in 2009 at the initiative of the Ministry of Labor and Social Policy the first survey on this subject was completed, commissioned by any State agency. This study was co-financed by the European Commission under the European Year of Equal Opportunities. All the above studies show that from 31% to 51% of LGBT persons have experienced psychological violence while 11% and 25% experienced physical violence.

So far, none of the Equality Bodies carried out this type of research, although the information obtained from PRT shows that the first such analysis commissioned by the PRT will be yet published in 2012.

5.3 Is there an effective system for recording and publishing statistical data on hate crimes and incidents motivated by hatred based on a) sexual orientation b) gender identity?

Existing systems do not allow for recording and publishing data on homo-and transphobic crimes or incidents of hate, because of the absence of homo-and transphobia as the motive of a crime in the CrC. The RPO has taken some measures to allow for the systematic collection and presentation of data on application of non-discrimination principle also in relation to sexual orientation and gender identity. The first report will be published at the end of the second quarter of 2012.

The police tool used to collect and process data on this type of crime is the National police Information System (KSIP). Yet it is not useful in monitoring crimes involving homophobia and transphobia as a motive. The main obstacle is the fact that an integral part of the information provided in the system is to assign each event a suitable legal qualification. Due to the current wording of CrC, which does not provide for homophobic crime, the event, which is in fact a consequence of such an incentive in the system are assigned to other types of crime. Also searching the registry will not be effective, as information about the homophobia does not matter.


154 Letter of the Chancellery of the Prime Minister of 10 April 2012.
in the legal sense so often it is not at all disclosed by law enforcement. It overlaps the commonly occurring tendency of not reporting such crimes. In addition, the availability of the data contained in KSIP is very limited and can be used only by authorized persons, which means that the processing of such data would be duty of the policeperson. There is no information that this type of analysis was carried out at present and in the past. The MSW set up Team for Monitoring Racism and Xenophobia, whose scope of activities includes keeping a database of the phenomena of discrimination. Due to the occurrence of problems related to the need to meet the legal requirements of other legislation (including data protection), this type of database has not yet been formed. With the AOET introduction of the RPO as Equality Body, a duty has been imposed to report annually the status of compliance with the principle of equal treatment, including the release of information for 2011, planned, however, only the second quarter of 2012. RPO released information and data statistics for the range of issues of equal treatment for the 2011. They show that in 1033 cases concerning issues of equal treatment, which in 2011 were received RPO, the most - 334 (32,3%), related to discrimination based on sexual orientation, while 12 cases (1,2%) involved unequal treatment based on gender identity. PRT does not keep any record, or does not publish statistics on hate crimes. Various State institutions also refer to data collected by the Department of Statistics at the Department of Courts, Organization and Analysis of the Justice System of the MS. However, due to the fact that CrC does not stipulate the possibility of homophobic motivated crime, statistics carried out by the MS do not include data on such crimes or incidents. On 27 April 2012, the Regulation of the Ministry of Justice on the list of ECRIS codes used for transmission of information on the legal classification of the deed, which under the category of Offences against personal liberty, dignity, or other protected property, including racism and xenophobia (Category 0900 00) distinguishes sub-category "Discrimination because of gender, race, sexual orientation, religion or ethnic origin" (0914 sub 00). It is not known whether this system in practice allows the identification of the data relating only to sexual orientation. The system does not include gender identity.

b. "Hate speech"160


156 Letter of the Human Rights Defender of 5 April 2012


158 Letter of the Chancellery of the Prime Minister of 10 April 2012.

159 Ordinance of the Minister of Justice of 29 March 2012 on the list of codes used for transferring, via the ECRIS system, information on the legal qualification of the prohibited act adopted in the court decision, penalties and penal measures as well as on preventive, reformatory, educational and therapeutic measures and the method for applying such codes [Rozporządzenie Ministra Sprawiedliwości w sprawie wykazu kodów stosowanych przy przekazywaniu za pośrednictwem systemu ECRIS informacji dotyczących kwalifikacji prawnej czynu zabronionego przyjętej w orzeczeniu oraz orzeczonych kar i środków karnych, jak również środków zabezpieczających, wychowawczych, poprawczych i wychowawczo-leczniczych, oraz sposobu zastosowania tych kodów z dnia 29 marca 2012 r.] (Journal of Laws 2012, item 367).

160 See Explanatory Memorandum for definition of "hate speech".
6. Member States should adopt appropriate measures to combat all forms of expression, including expression in the media and the Internet, which could reasonably be perceived as likely to have the effect of incite, promote or promote hatred or other forms of discrimination against lesbian, gay, bisexual and transgender. This type of "hate speech" should be prohibited and publicly condemned as soon as it appears. All these measures should ensure respect for the fundamental right to freedom of expression, in accordance with Article 10 of the Convention and the jurisprudence of the Court.

6.1 Are there any legal instruments that penalize „hate speech” in some circumstances? Do these instruments penalize homophobic, transphobic “hate speech”?

There are punitive measures that in some circumstances penalize „hate speech.” However, they do not cover the homophobic/transphobic motivation of such offences.

Hate speech crimes are codified in the Polish CrC and include the following categories of offenses prosecuted ex officio, by way of criminal proceedings:

- The use of violence or threats towards a group of persons or a particular person because of their national, ethnic, racial, political, or religious beliefs or because of its lack (art. 119 CrC),
- A public promotion of fascist or other totalitarian system of government or to incite hatred towards national, ethnic, racial, religious groups or because of lack of belief (art. 256 § 1 of the CrC),
- Producing, recording, importing, acquisition, storage, possession, display, transport, transfer to distribute in print , or other object, containing the content set out in art. 256 § 1, or which conveys the symbolism of fascist, communist or other totalitarian systems (Art. 256 § 2 of the CrC).
- Publicly insulting a group of persons or a particular persons because of their national, ethnic, racial, religious affiliation or because of its lack of religious beliefs, or violation person’s physical integrity for these reasons (art. 257 CrC).

Non-governmental organizations that have been operating in Poland for many years lobby for including homophobia and transphobia to the crime catalogue of “hate speech” also by introducing appropriate draft projects to the Sejm. The research carried out in 2011 shows that 92,9% of the surveyed LGBT persons met with verbal violence such as verbal provocations, insulting, offending or humiliating because of their sexual orientation or gender identity. The most common offenders of such violence are colleagues or acquaintances (40,1%), persons known by sight (25,6%) and family (14%).

The CBOS research carried out in 2007 reveals, however, that 73% Poles think freedom of speech should guarantee freedom of expression unless the expressed opinions are insulting, deriding or wrongful. In spite of this data the government does not seem to have noticed the problem for years and refrains from actions which in a real way could lead to introducing appropriate amendments to criminal provisions. The MS does not see the “particular axiological reasoning” to introduce more severe responsibility for homophobic/transphobic “hate speech”. According to the
MS, “hate speech” based on such motivation does not have an impact on “public welfare” and “peaceful persons-to-persons contacts”. PRT has announced that it is at a stage of holding consultation with the experts with regard to adding the sexual orientation and gender identity to the catalogue of premises of this crime category. On the 2nd of January 2012 PRT put forward a proposal to the MS to take legislative measures which would penalize “hate speech” because of among others sexual orientation and gender identity premises.

The authorities often put forward an argument that the existing criminal law provisions already provide the LGBT community with a sufficient protection. This protection is to be ensured by such provisions: art. 190 § 1 CrC (punishable threat), art. 212 CrC (defamation) and 216 CrC (insult). In practice, it is ineffective (case No. 3, 88). As for art. 190 CrC, it is required to specify the addressee of the threat by naming the person or by indicating them clearly in any other way. The threats of violence or even of deprivation of life against groups of persons, for instance customers of places set up in principle for homosexuals and bisexuals, are not covered under the provisions of art. 190 CrC or any other provision of the penal code. It happens that they are treated as a threat which however does not entitle to use any measure provided by penal law. As a comparison, analogous threats against persons attending places where religious minorities hold their meetings are qualified under the provisions of art. 119 CrC and are prosecuted.

In this case, naming the addressees of a threat is not required, and thus there is no fear of realizing the threat but the probability of realizing it is not analyzed. As far as art. 212 CrC and art. 216 CrC are concerned, the difficulty is that the offences are prosecuted on private indictment that significantly diminishes the effectiveness of their application (case No. 4, 133). It means, that the deprived person has to bring accusation against the offender on her own and present evidence that prove the charges. Also, the insignificant severity of sanctions for committing crimes under provisions of art. 212 CrC and art 216 CrC and provided by these articles have impact on the weakness of the protection provided by these articles. (In comparison for instance to art. 119 CrC, art. 256 CrC, art. 257 CrC). It is worth mentioning that the very public incitement to a crime is prosecuted under the provisions of art. 119 CrC. or art. 257 CrC. Similarly, the very involvement in a criminal organization or an association of persons aiming at committing a crime under provisions of art. 119 CrC, art. 256 CrC or 257 CrC is a separate crime prosecuted under provisions of art. 258 § 1 CrC. Such additional protection does not have an equivalent in art. 212 CrC or art. 216 CrC.

A related issue which reveals inappropriateness of the binding regulation and its application refers to the fact that a public incitement to a crime in Polish law is perceived both as an offence (art. 255 CrC) and petty offence (art. 52a of the CPO). In practice, in cases concerning homophobic hate speech Prosecutor’s Office classifies such behavior as a petty offence which results in reducing the

161 Art. 255 § 1 of the CrC.
Currently, two draft acts changing the regulations concerning hate speech crimes are being considered in Parliament. Drafts are based on the ones prepared by non-governmental organizations and extend the catalogue of offences to malicious acts committed because of sex, gender identity, age, disability, and sexual orientation. The draft has been endorsed by RPO. A similar draft was introduced during the last parliamentary term. It was accepted then by National Juridical Council and PG. However, the act did not come into force because of lack of political willingness to pass it before the end of the parliamentary term. It is also doubtful whether the current political groups allow the amendments to come into force.

6.2 Are media organizations, including the ones operating over the Internet, being encouraged to promote in their practices (for instance by the codes of practice) the culture of respect, tolerance and diversity as well to avoid negative and stereotypical presentation of LGBT community?

The authorities do not take any steps that would encourage promoting such kind of practices by media organizations, despite the constant presence of homophobic/transphobic statements in media.

The main arguments brought up by different national agencies, which do not see a reason to engage in such activities, refer firstly to lack of legislative responsibilities demanding such practices, and secondly to the constitutional principle of pluralism which could be infringed by such “interference” of authorities. The only regulation in the existing law system which directly refers to the realization of such recommendation is art. 16b section 3 item 2 Radio and Television Act (RATVA), according to which commercial message cannot include any discrimination based on race, sex, nationality, ethnic origin, religion or belief, disability, age or sexual orientation. However such a provision not only does not include gender identity but also puts on authorities only a duty of monitoring, not positive action of promoting tolerance towards LGBT community.

In the past, imposing an obligation to act towards acceptance of diversity could have brought a positive change. It could have been achieved by passing a draft proposal of regulations concerning public service in the fields of media service in 2009, which in art. 3 item 9 stated that public broadcasters should for public service purposes counteract discrimination based on race, nationality, religion, sex and sexual orientation. The draft proposal did not come into force because of the presidential veto on 17th of July, 2009. Further lack of active commitment of State in such kind of actions surprises even more as negative and stereotypical presentations of the persons

from LGBT are common in media (case No. 6, 11). Very often such presentations are so outrageous that the case goes to court, which has to decide whether particular statement did not infringe journalistic freedom of expression.

Charter of Media Ethics, and based on it Code of Journalistic Ethics, accepted by the Polish Journalists’ Association in 1995 are initiatives which could support the process of creating good practices in this area of realizing the Recommendations. The Charter obliges its members - journalists, producers and broadcasters to show respect to persons regardless of their ideological, cultural or moral diversity (item 3.10 of the Code). The weakness of these regulations is the fact that they are not binding and thus weaken their value and effectiveness. So far, Media Ethics Council appointed on the basis of the Charter of did not voice its opinion on any case concerning media messages regarding LGBT community.

6.3 **Have legal instruments penalizing „hate speech” in the Internet been implemented? Do they include hate speech based on homophobia and transphobia?**

These types of legal instruments have not been implemented, although there is an obvious need for such.

The research on violence motivated by homophobia shows that about 1,3% of surveyed persons met with verbal aggression either in the Internet, in form of a text message or over the phone. The comments published by the Internet users are full of homophobic phrases. It is visible especially in case of commenting issues regarding LGBT matters, for example parades, speeches of persons openly admitting their sexual orientation or gender identity. Due to anonymity, the authors of such comments remain unpunished. Regulations (art. 212 CrC and art. 216 CrC) shift the responsibility for finding the author of the comment onto the victim of the homophobic hate speech. 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 were collected, one cannot be sure of winning the case. For the IP address is not a sufficient piece of evidence which could prove that the computer is owned or used by a perpetrator. Lack of the obligatory participation of the prosecutor during this type of proceedings (art. 212 CrC and art. 216 CrC are offences prosecuted on private indictment) makes the possibility to investigate the offender’s responsibility even less probable.

6.4 **Have Internet service providers been encouraged to take measures to prevent the dissemination of materials, threats and insults on the ground a) homophobia b) transphobia?**

The State has not yet taken this type of action. Also, Internet service providers have not shown not initiative in this regard.

State justifies lack of activity in this field with the same arguments as in the case of absence of a commitment to take measures to prevent homo/transphobia in other media. First, various State
agencies indicate no statutory obligation to undertake this type of interaction. Second, in order to protect the constitutional principle of independence and pluralism, which could be compromised by such “interference” from the authorities.

KRRiT, which is the most important public institution in the design and supervision of State policy in the media indicated that this authority has no competence in the field of internet activity, also there are no statutorily defined powers to influence broadcasters in this respect. Only in the case of finding infringement, the KRRiT may commence investigation. So far, KRRiT has not taken its own initiative to encourage Internet Service Providers.

Also, the suppliers themselves do not see the need to carry out actions in dealing with hate speech, especially directed against the LGBT minority. The information contained on their web site shows that within the policy ‘community involvement’, the Internet service providers implement projects that focus only on: technological exclusion, safe Internet use by children, activating seniors and disabled persons to enable them or encourage them to join the online community, cybercrime, copyright, charity and environmental protection.

Polish Chamber of Electronic Telecommunications, which brings together 110 companies from the Polish market of electronic services also does not get involved so far in the activities aimed at combating hate speech.

The current situation is also influenced by the fact that current national and EU legislation do not impose an obligation on service providers to monitor the network from the perspective of breach of any applicable law (Case No 28).

6.5 Are cases of “hate speech” publicly condemned by top government officials? Expressions bearing the hallmarks of hate speech are condemned by many Members of the Parliament (case No. 19, 24, 25) and in the official statements of State institutions (case No. 20, 21, 22, 23). Most of such statements would come from left-wing politicians, while the right-wing politicians lessen the impact of such incidents referring to the defense of “free speech” (case No. 26).

7. Member States should raise awareness among public authorities and institutions at all levels about their obligation to refrain from statements, in particular those targeting the media, which can justifiably be perceived as legitimizing hatred or discrimination against lesbian, gay, bisexual and transgender persons.

164 Letter of the Minister of Culture and National Heritage of 5 April 2012.
165 Letter of the National Broadcasting Council of 29 March 2012.
7.1 Have guidelines been issued or other steps taken to raise awareness of the obligation to refrain from such statements among public authorities / institutions?

So far, guidance or other steps to raise awareness of the duty to refrain from homosexual and transphobic statements among public authorities and institutions at the system level have not been accepted. If it is at all possible to talk about raising awareness of the duty to refrain from such statements, it is more the result of continuous intervention of the media and NGOs, supported by Equality Bodies rather than a result of a coordinated national policy (Case No. 29). Sometimes, however, the actions taken by various State agencies can foster changes in attitudes in this respect (Case No 30). So far they have not, however, gained supraministerial level.

7.2 Have there been cases of statements of the authorities and public institutions that may reasonably be construed as a legitimization of hatred or discrimination?

Cases of this type of expression of the authorities and public institutions have appeared both in the past and present (case No. 12, 13, 14, 15, 16, 17, 18, 31).

8. Representatives of public authorities and other State representatives should be encouraged to promote tolerance and respect for human rights of lesbian, gay, bisexual and transgender persons every time they are holding discussions with key representatives of civil society, including the media, sports organizations, political parties and religious communities.

8.1 Have guidelines been issued in this respect for officials and representatives of state?

8.2 If so, is there evidence of promoting tolerance of LGBT persons by government officials in their dialogue with civil society and encouraging them to express themselves in a responsible way and with no violence?

These types of guidelines have not yet been issued. There is little evidence of State officials promoting tolerance towards LGBT persons. In most cases, neither government officials nor representatives of the authorities take up this type of activity.

Promoting tolerance towards LGBT persons is only visible in the activities of national Equality Bodies, both RPO and PRT, however also in their case it is necessary to increase their sensitivity, especially in the context of transgender persons, who are often overlooked by the two bodies (such as PRT website does not distinguish unequal treatment caused by gender identity among the areas of discrimination 167 ). The activity of these organs to a small extent, however, translates into the behavior of other officials. If the media publicize homophobic incidents, State officials either do not take the stand, or marginalize its importance (Case No. 89). Sexual orientation is still not perceived as a condition under which the discrimination should be prohibited. State officials do not

organize projects that foster the promotion of tolerance towards LGBT persons. They also refuse to join the LGBT initiatives (Case No. 37).

II. Freedom of association

9. Member States should adopt appropriate measures to ensure, in accordance with Article 11 of the Convention, the effective exercise of the right to free association, free from discrimination based on sexual orientation or gender identity, in particular, to prevent the use of discriminatory administrative procedures, including excessive formalities relating to the registration and activities of associations, appropriate measures should also be taken to prevent abuse of legal and administrative provisions, such as those associated with limitations based on the records of public health, public morality, law and public order.

9.1 Are organizations that have publicly declared their purpose is to work for the well-being of LGBT persons, whether for their human rights or in other ways, prevented from official registration?

9.2 If so, is it done by using discriminatory procedures through restrictions concerning public health, public morality or public order, or in some other way?

In principle, organizations declaring action for LGBT persons can register their activities on an equal footing with other organizations. Sometimes, however, the registration process of such organizations is unreasonably prolonged due to procedural difficulties, yet it cannot be unambiguously determined whether such impediments are caused by the prejudices of the officials (case No. 32).

9.3 Are there examples of actions taken to: ensure that LGBT organizations are free to work, to provide organizations with opportunities to defend their interests, if necessary, to facilitate and promote their work?

Examples of such actions (case No. 90, 91) taken to ensure that LGBT organizations are free to act, to provide organizations with opportunities to defend their interests, if necessary, to facilitate and encourage their work in practice are rare. There is lack of commitment from the State to support the basic objectives and activities of such organizations. The LGBT initiatives implemented by the State and NGOs are in most cases perfunctory in nature. Cooperation during the preparation of a cooperative endeavor does not translate into State involvement in the implementation stage (case No. 32). Moreover, typically, the uneven division of mutual responsibilities burdens NGOs to a greater extent.

The results of work of LGBT organizations generally do not meet with the activities of the State aiming at their promotion (case No. 35,36). Government officials deny such activity, for reasons that cannot be rationally justified (case No. 35, 37). This raises concerns whether their passive
attitude is not due to personal dislike or fear of political consequences of being associated with the LGBT community (case No. 37).

9.4 Are LGBT organizations involved in the development and implementation of public policies that affect LGBT persons on partnership basis?

LGBT organizations are most of the times not involved in the development and implementation of public policy on a partnership basis. In most areas of public life, the State still does not see the need to take any initiatives on LGBT issues. And in the case when it takes actions that may affect the LGBT environment, it is usually not interested in cooperation with its representatives. Declarations of cooperation with LGBT organizations made by various State agencies usually do not translate into any effective action. LGBT NGOs cooperation with the Polish Equality Bodies (RPO and PRT) is usually limited only to encourage these bodies to take specific actions.

Lack of noticing the need to take action on equality policy, including on LGBT persons is evidenced by the fact that the priorities set by the Prime Minister of the Polish presidency of the EU in 2011 clearly lacked clear statements of issues of anti-discrimination. For this reason, on 19 July 2010, a conference of representatives of the Coalition for Equal Opportunities was held, which presented a list of over 40 organizations calling for Prime Minister Tusk to take active steps to change this situation. But there are also a few examples of positive action in this regard (case No. 90, 92).

10. Access to public funds to finance non-governmental organizations should be secured without discrimination on grounds of sexual orientation or gender identity.

10.1 Has public funding been provided without discrimination of LGBT organizations?

10.2 Has such support been made available to LGBT organizations?

Theoretically, the law allows public financing of activities of all NGOs without discrimination. In practice, LGBT organizations often met with a refusal to be granted financing, in many cases motivated by the unwillingness of the decision-makers to favor this type of organization (case No. 93), or due to the suspicion of such motives. In addition, activity run by such organizations is rarely in the priority list of local and central government and are not first in line to be granted founding. It should be indicated, however, that there are cases of financing the activities of LGBT organizations from public funds (case No. 94, 95, 96, 97, 98).

11. Member States should adopt appropriate measures aimed at effective protection of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, to which they may be exposed, even if the alleged perpetrators of such acts of hostility or aggression are
representatives of public authorities, in order to allow the free exercise of their activities, in accordance with the Declaration of the Committee of Ministers of the Council of Europe on action to improve protection of human rights defenders and promote their activity.

11.1 Does the State provide effective protection against the hostility and aggression against human rights organizations of LGBT persons?

Human rights organizations and their representatives cannot be guaranteed any special protection from the state. Occasionally, incidents occur against LGBT activists, whose perpetrators often remain undetected (case No. 27, 38, 41, 40). It happened also that the perpetrators of violent attacks on LGBT activist were police officers (case No. 39). Nevertheless, State involvement in the protection against the hostility and aggression is still limited to securing equality marches. This situation is also affected by the fact that there is a lack of legal regulations concerning hate crimes motivated by homo/transphobia.

11.2 Are there examples of actions taken by the State to create an environment conducive to the activities of such organizations, enabling them to operate freely, and to promote respect for their work?

There are a few examples of State actions creating an atmosphere conducive to the activities of LGBT organizations, enabling them to operate freely and promoting respect for their work. They are not the result of conscious and coherent policy in this area, but they are a consequence of decisions of individual officials, who notice a need to engage in creating a favorable environment for the LGBT organizations (case No. 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53).

11.3 Are LGBT human rights organizations able to work with national human rights institutions, the Ombudsmen media, other human rights organizations?

LGBT organizations are able to work with any of the institutions (case No 54).

National human rights institutions express interest in LGBT issues. Representatives of LGBT organizations and RPO and PRT are involved together in organizing meetings and conferences. Equality Bodies intervene on their own initiative or as a result of notification by LGBT organizations in matters of human rights of LGBT persons. RPO openly supports LGBT initiatives aimed at changing the current issues such as: the inclusion of homophobic hate crime motivation or amending regulations on the issuance of certificates of civil status of the person who wants to marry abroad with partner of the same sex, while both speak positively about the draft law regulating the legal procedure to correct gender and of need to end homophobic and transphobic bullying in schools.

LGBT organizations are in permanent contact with media representatives interested in LGBT issues. Information on the activities of these organizations appear in the mainstream press in the country. This also includes the publication of data from the research carried out by KPH. Since 2005, KPH
have published a bimonthly socio-cultural magazine "Replika", which is the only periodic which deals with LGBT affairs in Poland. In one of the leading Warsaw radio stations there is a regular show, "Better late than never," which is dedicated to LGBT issues.

There is also collaboration between organizations that deal with human rights protection in Poland. These organizations issue joint statements, organize conferences and trainings. If necessary, they create an informal coalitions that can create more impact in lobbying certain cases (case No. 55). The collaboration also includes mutual financial assistance.

Non-governmental organizations are seeking to establish friendly relations with every person who is elected to the position relating to the activities to promote equal treatment (case No. 99).

11.4 Are they able to take part in training courses, conferences and other forms of international activities related to human rights?

Yes, LGBT organizations are 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 No. 100, 101, 102, 103, 104).

11.5 Are there provisions for assistance for human rights defenders in third countries, such as participation / observation of trials or issuing emergency visas?

The information held by non-governmental organizations does not show that such provisions apply (case No. 105). State activity in this field has so far been limited only to participation in meetings with foreign representatives of LGBT organizations, aiming to exchange experience (case No. 106, 107). LGBT organizations may invite the LGBT activists from other countries to the trainings and scholarships organized by them or (case No. 56).

12. The Member States should carry out appropriate consultation with NGOs defending human rights of lesbian, gay, bisexual and transgender persons in adopting and implementing measures that may affect the human rights of those persons.

12.1 Are LGBT organizations consulted on issues of adoption and implementation of measures affecting the rights of LGBT persons?

KPH participated in consultations regarding AOET, but as a rule - a public consultation in the legislative process is mandatory. This happens mostly when LGBT organizations propose some solutions already having an impact on the community. The LGBT community itself is not regarded as a major goal of many of the proposed legislation which may in practice be crucial to the wellbeing of its members (such as family law, the provisions in vitro, adoptions, health, etc.).
12.2 Have there been consultations on the implementation of this recommendation?

To date, no such consultations have taken place.

III. Freedom of expression and assembly

13. Member States should adopt appropriate measures to ensure, in accordance with Article 10 of the Convention, effective exercise of the right to freely express opinion, free from discrimination based on sexual orientation or gender identity, including respecting the right to receive and share information on issues related to sexual orientation or gender identity.

13.1 Have the authorities assured the freedom to receive and give information and ideas relating to sexual orientation and gender identity, including: measures to promote human rights of LGBT persons, the publication of material, the presence in the media, organizing / participating in conferences, dissemination / access to information on safe sex practices?

13.2 Or, on the contrary, were there cases of limiting freedom of expression?

Basically, the Polish authorities do not currently intervene in the freedom to receive and give information or ideas in any of the above mentioned areas. This can be seen in particular in the sphere of the initiatives taken independently by the LGBT environment, which do not require the approval or financial support from the State. In the case where the realization of this freedom depends on the involvement of the State (in any form), it happens that it is sometimes limited in an unlawful manner (case No. 57, 68, 109). In the past there have been instances of limiting the freedom to receive and transfer such information and ideas (case No. 135).

13.3 Do the authorities promote pluralism and non-discrimination in the media in relation to orientation gender identity?

So far, no action has been taken, which would be aimed at promoting tolerance of LGBT persons in this area. This is particularly evident in the appearance of the information about homophobic incidents in the media. The authorities at various levels often remain silent and do not condemn such violations. Only a few politicians see the need to address the issue in their speeches. In most cases, the problem is not noticed at all, and it is the representatives of authorities who are often the authors of homophobic comments.

See items 6, 7, 8.

14. Member States should adopt appropriate measures at national, regional and local levels to
ensure the effective exercise of the right to peaceful assembly, as it is stipulated in Article 11 of the Convention, without discrimination because of sexual orientation or gender identity.

14.1 Have the authorities have assured the possibility of peaceful assembly of LGBT persons?

LGBT persons have a constitutional right to exercise the right of peaceful assembly (art. 57 of the RP Constitution). In fact, by 2005 the law had been repeatedly violated by the former rightist government through its decisions to ban gatherings, with justifications based on provisions of the Traffic Law or the law on assemblies (case No. 57, 58). However, the right to peaceful assembly has been confirmed by several fundamental decisions of national courts, the Constitutional Court and ECHR. At present, this type of State action has been discontinued. Although there are still provocations on the part of communities hostile to LGBT persons (whose perpetrators often remain unidentified), a possibility of organizing a peaceful LGBT assembly is guaranteed in Poland.

There is however new concern, as an amendment of the assembly law has been introduced. It stipulates among others that an assembly will have to be registered 6 months prior to the event which will block the possibility to react to current political and social events. Also it allows to ban an assembly which would collide with another one organized in the same place and time and the authorities come to a conclusion that it might cause damage to peoples life, health or property. The new law also puts new obligations on the organizer of the event and submits them to penal fee of maximum 7 000 PLN (ca. 1700 EUR).

For several years, equality marches are organized every year in Warsaw, Poznan, Krakow and Wroclaw. In 2010, Warsaw hosted EUROPRIDE. Although each time the marches accompanied by counter-demonstrations, the police provide sufficient measures to prevent escalation of violence.

However, low efficiency in detecting the perpetrators of hate motivated incidents during and after pride marches is still worrying (case No. 110) as is the fact that despite it has been five years since the verdict in Bączkowski and others v. Poland, the Polish government still has not implemented the provisions required by the judgment, relating to infringement of Article 11 of the ECHR (freedom of assembly and association) by the issuance by the President of Warsaw of a decision to ban the Equality Parade in 2005.

On June 15, 2012, one of the right-wing parties brought to the Parliament a draft amendment of the Law on Assembly, under which it would be possible to prohibit the Equality Marches. The law was not passed.

15. Member States should ensure that law enforcement authorities take appropriate steps to

168 Bączkowski and Others v Poland (application no. 15430/06, judgment of 3 May 2007).
protect participants of peaceful demonstrations expressing support for the human rights of lesbian, gay, bisexual and transgender persons against any attempt to unlawfully interfere or effectively exercise a right to freedom of expression and peaceful assembly.

15.1 Did the law enforcement authorities take reasonable and appropriate measures to enable lawful demonstrations the case of hostile attitude towards and assembly of LGBT persons?

15.2 In particular, did members of the police effectively protect peaceful LGBT demonstration?

In the past there were instances that, in spite of predictions of knowledge or the possibility of hostile reaction to the assembly of LGBT groups, law enforcement authorities did not provide adequate protection to its participants (case No. 59, 60). At the moment, protection of peaceful demonstration by LGBT groups is much more effective. Police focuses on preventing direct clashes by using cordon of officers separating the hostile demonstrations. The police also uses moving assistance, where the demonstration is moving. The police are equipped with appropriate equipment (shields, dogs, water cannons, rubber ammunition). Despite applied safety measures, however, attacks from opponents of such assemblies still happen, resulting in beatings and damage to property (case No. 111, 112, 113, 114).

15.3 Did the police act with integrity and with respect to dignity of LGBT persons and their supporters?

Usually, the police acted properly. There are cases where the manner of intervention of the various officers raised serious concerns about their compliance with the law (case No. 1, 39).

16. Member States should adopt appropriate measures to prevent limiting exercise of the right to freedom of expression and peaceful assembly, arising from the abuse of legal and administrative provisions, for example, relating to public health, public morals and public order.

16.1 Did the authorities restrict the freedom of assembly? If so, on what basis?

In 2005, the local authorities has restricted freedom of LGBT assembly twice by the issuance of a ban on organizing equality marches (case No. 61, 62). There were not major infringements of the right to assembly since then.

16.2 Were there any conditions required, such as relating to the route or time of the demonstration, which are not generally applicable to other demonstrators?

There were such actions taken by the authorities (case No. 61, 63). The organizers of the 2011
Warsaw Pride were convinced by the city authorities and the police to change the route of the march at the last moment to prevent escalation of violence from other gatherings that were registered along the previous route of the march.

16.3 When restrictions had been introduced, was there an opportunity to challenge them in the courts or other independent means of appeal?

Polish law provides the opportunity to challenge such a decision. The appeal procedure consists of two administrative instances and two more court instances. The decision of the Mayor may be appealed to the Voivode, and their decision can be appealed to the Voivode Administrative Court and further to the Supreme Administrative Court. Such procedure is lengthy, and if the decision to ban the assembly is issued a few days before the date of the event, it makes it impossible to obtain a court decision allowing for the holding of demonstrations in the originally scheduled date. In practice, this allows to block assemblies by authorities. This was pointed out by the judgment of the ECHR in the verdict in Baczkowski v. Poland. Although the judgment was issued 5 years ago, the Polish authorities still have not changed the existing regulations. The information obtained by non-governmental organizations show that work on amending the law is delayed due to lack of communication between the various ministries.

17. Public authorities at all levels should be encouraged to publicly condemn, particularly in the media, any unlawful interference with the right of individuals, or groups of persons to exercise their freedom of expression and peaceful assembly, especially if they are related to human rights of lesbian, gay, bisexual and transgender persons.

17.1 In the case of any unlawful interference with the right to freedom of expression and assembly, were the authorities encouraged to condemn such interference?

17.2 Did the authorities really condemn such interference?

17.3 Or, on the contrary, did the authorities endorse or support hostility towards LGBT freedom of assembly events?

The interference of local authorities in Warsaw and Poznan in organizing equality marches in 2005, was condemned and declared illegal by some State institutions and politicians (case No. 64, 65). All other serious disruption of assembly of LGBT persons, which have taken place over the past few years on the part of the opponents of LGBT persons using violent physical or verbal attacks, have been consistently criticized by leftist politicians and sometimes also by the Equality Bodies.

17.3 *In the cases of public hostility to freedom of assembly of LGBT persons, did the authorities public support that right? Or, to the contrary, did the authorities supported the hostility to freedom of assembly of LGBT persons?*

With the exception of years 2004 and 2005, when the assembly of LGBT were banned by local authorities, the law was supported. This happened despite the still persisting general social hostility to the presence of LGBT persons in public spaces. The CBOS survey shows 64% of Poles do not recognize the right of gay and lesbian organizations to carry out demonstrations. Some right-wing politicians and representatives of the church still express hostility towards LGBT assemblies in their statements (case No. 115, 116).

IV. **Right to respect to private and family life**

18. Member states should ensure that any discriminatory legislation criminalizing same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

18.1 *Does legislation criminalize same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?*

Same-sex sexual acts have not been criminalized in Poland since 1932. Also, there is no difference in the age of consent. The legal age of sexual initiation for consenting individuals is the same for homo- and heterosexual relationships whatever their gender and is 15 years of age (Art. 200 CrC).

18.2 *Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding*

a. sexual orientation

b. gender identity?

Provisions discriminatory towards LGBT people, both in terms of their wording and application, can be found in the CrC, CPP as well as the EPC.

One thing that remains to cause serious concerns are such terms as “a person remaining in de facto marital cohabitation” (Art. 115(11) CrC) or “a person cohabiting or jointly running the household” (Art. 2 of the Act on counteracting domestic violence). In practice, the interpretation of these terms may lead to discrimination against same-sex couples. One example of such unequal differentiation of legal situation is the entitlement to refuse to testify where defendant is the witness’s “next of kin” (Art. 182 CPP). Those who support the existing solutions often raise the argument that in the case of homosexual people Art. 185 CPP can be invoked, which provides that an exemption from the obligation to testify or answer a question asked by a court may be granted to a person “having a particularly close relationship” with the defendant. For NGOs, this argument is invalid as an exemption under Art. 185 CCP lies within the discretion of the court, while under Art. 182 CCP, it is the witness who decides if they testify or not. Further complications are involved in the fact that many offences contrary to the CrC are not prosecuted ex officio where the perpetrator is the victim’s next of kin (Art. 157(5) CrC – occasioning bodily harm, Art. 177(3) CrC – causing a road accident, Art. 278(4) CrC – theft; Art. 279(2) CrC - burglary, Art. 284(4) CrC – appropriation of property, Art. 285(2) CrC – dishonestly obtaining a telecommunications connection at the expense of another, Art. 286(4) CrC - fraud, Art. 287(3) CrC – computer fraud, Art. 289(5) CrC – the taking of a vehicle). Persons whose same-sex partners have committed any of the above against them have no right to decide if they wish to have their partners prosecuted and tried and have to accept that the public prosecutor or the police will initiate proceedings without their consent.

Doubts as to the interpretation of the terms “family” or “next of kin” cause further complications also under the EPC. Homosexual people may face discrimination in relation to Art. 91(7) and Art. 92(9) EPC (granting release on temporary license), Art. 105 EPC, Art. 105 EPC (contacting family and other next of kin), Art. 141 EPC (granting rewards in the form of a reduction in the sentence). For example, under the latter, a inmate with a partner of the opposite sex may have his or her penalty modified in line with the principle of individualization, a reward that can be unavailable to a person in a same-sex relationship due to a narrow interpretation of “next of kin”. This is also the case when applying for early conditional release (Art. 159 EPC) – in practice, the decision on whether or not to grant it depends on the situation of the inmate after release and whether or not he or she has someone to return to. Also in the case of temporary forms of exemptions from serving a sentence, such as the postponement of the enforcement of penalty (Art. 151 EPC), a “leave” from serving a sentence (Art. 153 EPC) and the conditional suspension of postponed penalty (Art. 152 EPC), the need to take care of one’s next of kin is in practice a vital argument for courts granting requests for such exemptions.

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Homosexual people are restricted in the possibility to enjoy unsupervised visits with their partners (Art. 138(1)(2) EPC) and unsupervised visits in separate rooms (Art. 138(1)(3) EPC). When it comes to unsupervised visits outside prison (Art. 138(1)(7) EPC), inmates may be granted such a visit to see their “next of kin or a trustworthy person”. Such solution may lead to the discrimination of both inmates and their partners outside.

18.3 If so, what steps are the authorities taking to remedy this situation?

Despite repeated appeals from the NGO community, the Government has not taken any measures to change the indicated provisions or the practice of their application. According to the MS, “Polish law includes no provisions of this kind” (ones that could be discriminatory towards LGBT persons).

19. Member states should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

19.1 What steps have been taken to ensure that public authorities comply with this requirement, in respect of:

a. sexual orientation
b. gender identity

particularly with regard to records held by law enforcement authorities?

19.2 What steps have the authorities taken to ensure that existing records are destroyed?

19.3 Have these steps been effective?

There is no information available to NGOs to suggest that State authorities, including law enforcement, collect data on sexual orientation. Details of sexual life belong to so-called sensitive data, subject to special protection. It is prohibited to process such data (art. 27 (1) PDPA) except

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in an exclusive list of cases when this is allowed (Art. 27(2)(2) PDPA). 

The CBA a special department to combat corruption and other activities that may affect the economic interests of the State, has a statutory obligation (Article 22a(10) of the AoCACB) to destroy, with supervision and with records kept of the procedure, personal data, including data on sexual life, of all those who, after CBA proceedings have been conducted, have not been convicted of an offense. The data should be destroyed immediately after the date of the relevant decision. The MSW, responsible for the police, pointed out that “data on sexual orientation and gender identity are collected neither in the registry office records nor in any computer records held and supervised by the MSW.” According to the MS, no such data is stored in any public prosecutor’s records or court records as part of criminal proceedings. However, the Ministry does not exclude the possibility that such data may nevertheless be included in the evidence, for example as a result of testimony. According to the NIK the State audit authority, its officers, if it is necessary for the purposes of audit, may have access to sensitive data only after it has been deprived of any details allowing for the identification of an individual. Moreover, according to NIK, it has never kept any records relating to sexual orientation or gender identity.

Under Art. 27(2)(2) PDPA, personal details pertaining to a person’s sexual life may be processed where:

1) the data subject has given his/her written consent, unless the processing consists in erasure of personal data,

2) specific provisions of another statute provide for the processing of such data without the data subject's consent and provide for adequate safeguards,

3) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his/her consent until the establishing of a guardian or a curator (a court officer appointed to act on behalf an in best interest of a person without legal capacity or absent),

4) processing relates to data necessary to pursue a legal claim,

5) processing is necessary for the purposes of carrying out the duties of controller with regard to the employment of employees and other persons, and the scope of processing is provided for by statute,

6) processing is required for the purposes of preventive medicine, the provision of care or treatment, where the data is processed by a health professional subject involved in treatment, other health care services, or the management of health care services and subject to providing full safeguards,


178 Letter of the Minister of Justice of 17 October 2011.
7) the processing relates to data made publicly available by the data subject,
8) it is necessary to conduct scientific research including preparations of a thesis required for graduating from university or receiving a degree; any results of scientific research shall not be published in a way which allows for the identification of data subjects,
9) data processing is conducted by a party to exercise the rights and duties resulting from decisions issued in court or administrative proceedings.

As regards gender identity, no measures have been taken to put an end to the collection of the data of people undergoing gender reassignment. Information concerning gender reassignment is not considered to be particularly sensitive, probably because there is no legal recognition of gender identity as personal interest. Although gender is deemed to be a personal interest, it is also among the details that must be entered on a birth certificate and therefore its status is different than that of sexual orientation.

Although PDPA introduces a catalogue of data the processing of which is prohibited, it includes neither gender (recognized as a personal interest pursuant to Supreme Court judgment of 22 March 1991, file No. II CRN 28/91) nor gender identity (not recognized as a personal interest or a ground for discrimination. The statute safeguards information about sexual life and genetic code (Art. 27(1) PDPA), which can, by some standards, be associated with transsexuality. However, the statute does not directly refer to the protection of data concerning people after gender reassignment. Additionally, it restates the necessity to include a designation of gender in population registration numbers (Art. 28(2) PDPA): “Serial numbers applied in the census may include only such features as: sex, date of birth, consecutive number, and control number”.

Also, the Act on Registry Office Records Act (AoARORA) regulates the issue of amendments to a birth certificate. Art. 21 AoARORA provides for the manner in which changes should be introduced after the making of a certificate, which should be made as “additional remarks”, addresses cases in which such remarks may be entered (pursuant a final and valid court decision, final decisions, certified copies of registry office records and other documents that may affect the contents or validity of a certificate), and instructs about the manner of referring to other registry office records concerning the same person (case No. 134).

19.3 Is there any evidence of:

a) the continued existence of such records
b) the continuing collection of such data?
The authorities have not resolved doubts concerning the storage of information gathered by the *Milicja Obywatelska* in 1985-1987 as part of operation *Hyacinth*. Its purpose was to collect materials about Polish gay men and the gay community. The police recorded approximately 11,000 personal files containing details of sexual preferences. 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 (hereinafter: IPN), some are purportedly still stored in Regional police Headquarters.

Based on information provided by IPN, Institute has certain materials referred to in the question, produced and collected by the former security services in 1944-1990. The 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 IPN may only request that his or her data that could reveal, among other things, the details of his or her sexual life, will not be made available (Art. 37(2) of the AoINR).

Representatives of the authorities do not openly address the issue of data concerning gender identity. However, historical information allows for a conclusion that transsexuals, intersexuals, and people displaying gender non-conformity were invigilated and registered as homosexuals. NGOs have no information concerning the number of applications filed with IPN and IPN’s decisions.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

20.1 *Has a review of prior requirements been conducted?*

No review of prior requirements has taken place so far.

20.2 *Are there still requirements which might be considered disproportionate or even abusive, such as:*

   a) irreversible sterilization,
   b) hormonal treatment,
   c) preliminary surgical procedures, or
   d) proof of a person’s ability to live for a long period of time in the new gender?

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181 The action was aimed to collect data about Polish gays and their environment. As a result of activities of the Communist Police, about 11,000 personal files were registered, including data on sexual preferences. It has not been established clearly what happened to those files.

182 Letter of the Institute of National Remembrance (IPN) of 19 April 2012.

The current gender recognition procedure is conducted pursuant to the Supreme Court judgments of 25 February 1978, 22 March 1991, and 22 September 1995, as well as Art. 23 CC, Art. 189 CCP and AoARORA.

The 1978 decision allowed for legal gender recognition without genital surgery: “In exceptional cases the court is empowered to correct a birth certificate by changing the designation of sex also prior to a corrective surgery of external sex organs where the features of the developing gender predominate and the condition is irreversible”. Today’s judicial practice seems to treat nearly all cases of gender reassignment as an “exceptional case”. To correct a birth certificate, it is usually requested that the person (diagnosed as transsexual) should undergo hormone therapy and, in the case of trans-men, undergo chest reconstruction (mastectomy). This inequality (trans-women are only required to undergo hormone therapy) is probably a consequence of the ambiguity of the requirement that the “predominating features” referred to in the judgment should be irreversible. It should be remembered that Art. 156 CrC prohibits sterilization, with the offence punishable with 1-10 years imprisonment. It is now apparently common practice for people seeking gender recognition to invoke this provision. Because of this absolute prohibition, sterilization is not required for legal gender recognition. It should be stressed, however, that there are no provisions to regulate this issue in the context of transsexuality or the change of gender designation as such.

To diagnose transsexuality, doctors require hormone therapy, which, in the judicial practice, constitutes evidence that the legal interest of the person petitioning for correction is valid.

Supreme Court judgment of 22 March 1991 (II CRN 28/91) includes the following statement: “the sense of belonging to a particular gender may be deemed to be a personal interest and as such is also protected by way of action for determination”. Under this decision, a person applying for the correction of gender in his or her birth certificate may bring an action referred to in Art. 189 CCP: “The plaintiff may demand that the court determine the existence or non-existence of a right where he or she has legal interest therein”. Thanks to this, a final and valid court decision is the basis for correcting an entry in the relevant registry office records by making an additional remark. In other words, no new certificate is created, only amendments are made to the existing one. Supreme Court judgment of 22 September 1995 (III CZP 118/95) specified the parties involved in legal gender recognition. The defendants in the civil proceedings should be the transsexual person’s parents due to the relevant family law connections pertinent to cases concerning civil status. Where either parent is dead or the parents cannot be located, a curator (a court officer appointed to act on behalf an in best interest of a person without legal capacity or absent) is involved.

Although the procedures for diagnosing transsexuality in Poland are slowly departing from the real-life test (cases recorded by the Trans-fuzja Foundation), it seems that it is still counted by the courts among the more important types of evidence in “actions for determination”. This is of much importance since still there are no regulations concerning the length of the real-life test. It varies from three months to over two years. At the same time, it should be remembered that the judicial
practice in such cases involves not only a questioning of the parties and an analysis of medical documentation, but also the appointment of an expert witness to verify the diagnostic process that the transsexual person has undergone (and which includes many tests, both psychological and physiological). This means that Polish gender recognition procedures are very strongly marked with medicalization and are not considered to be solely of legal nature.

One important judgment concerning gender recognition and involving an expert witness opinion was entered by the Court of Appeal in Krakow on 30 April 2004 (file No. I ACa 276/04). The person seeking gender recognition, in support of her claim, argued that she was a transsexual and her parents accepted the claim. The evidentiary procedure held by the Krakow court led, surprisingly, to the action being dismissed because there were no provisions “for a procedure for solving the problem of legal protection for the sense of belonging to a particular gender”. The plaintiff had gone through the procedure typical for a person willing to have his or her gender corrected on documents – she had been under medical observation for 5 years, identified herself as a female contrary to her biological features and was undergoing hormone treatment to change her physical appearance. The case was based on an appeal against a judgment of the Circuit Court (Sąd Okręgowy) in Krakow.

The Court of Appeal held as follows: The determination of gender by way of court decision may not be based solely on a person’s sense of belonging to a particular gender. This sense of belonging and its significance in the multi-dimensional system of gender identification should be considered juridically only after it has been considered medically. The set of a number of factors determining human gender requires medical expertise. Medical examination should reflect the relationship between the documented gender of the plaintiff and his health, in the context of the current medical knowledge. Human gender can only be established juridically in court proceedings based on expert evidence. This is because the determination of human gender requires expert knowledge (Art. 278 CCP). This kind of evidence cannot be replaced by witness testimonies. In its essence, witness testimonies (Art. 258 CCP) involve the presentation of facts as perceived by the witnesses (and in principle this is what the testimonies given by witnesses Z. L. and Z. J. concern), which deems them insufficient to determine the plaintiff’s gender. Before the court of first instance, the plaintiff did not present expert evidence. There are also no legal grounds for such evidence should to be taken ex officio.

This judgment clearly illustrates the fact that under the circumstances, transsexuality must become even more medicalized (here referred to as “transsexualism”, also called an “illness”) in the Polish judicial system. According to the court, the opinions of witnesses and the plaintiff’s statements are not sufficient evidence for the legal recognition of gender. Again, the judgment stresses the need for the involvement of an expert in medicine in the court proceedings, without specifying what kind of expert it should be exactly.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member
states should also ensure, where appropriate, the corresponding recognition and changes by non-State actors with respect to key documents, such as educational or work certificates.

21.1 Are there procedures in operation which ensure the full legal recognition of a person’s gender reassignment?

21.2 Do these make possible the change of name and gender in official documents, including:
   a) birth certificates,
   b) identity papers,
   c) driving licenses,
   d) passports,
   e) social insurance cards and numbers,
   f) electoral registers
in a quick, transparent and accessible way?

After a person acquires a court decision correcting their gender. The decision is the legal basis for changing other documents – a new PESEL (personal registration number) is issued (only on the request of the person in interest) as it indicates a gender of a person, then an ID, passport, driving license is changed according to the administrative procedure. Birth certificate is not changed fully. It is amended, but the original data (gender) is still visible for anyone who would acquire a full version of that document. It is worth noting that not everybody can obtain a person’s birth certificate – before they do so – they have to prove they have a particular ‘legal interest’ in it, e.g. inheritance.

21.3 Are there procedures to ensure corresponding changes in key documents originated by non-State actors, such as
   a) diplomas,
   b) certificates of employment, and
   c) insurance or banking documents?

21.4 If yes, do these procedures include the protection of the person’s private life, so that no third party can become aware of the gender reassignment?

Administrative bodies seem to adopt a similar position in this respect. It is acknowledged that the current situation departs from the human rights standards set by international institutions, but this is explained by pointing out to the existing law and the case-law of administrative courts and the Constitutional Tribunal.

There are no provisions to regulate changes in employment certificates and diplomas (other than university diplomas, which according to the law have to be changed after legal gender
of people after legal gender reassignment. Data can be changed on such documents upon the request of the person who has undergone gender reassignment. However, there are no legal mechanisms to force an employer, to amend such data.

The experience of NGOs shows that some institutions are able to take into account the potential difficulties in finding work that a person after gender reassignment may face and agree to amend such documents. Those who refuse argue that the particulars do not have to be changed pursuant to Art. 21 AoARORA.

In a letter dated 5 April 2012, GIODO (GIODO) stated that he may not encroach on the competence reserved under law for other entities. At the same time, it was pointed out that there is no comprehensive statute or other legislation to regulate the issues surrounding transsexuality, including the distribution and existence of the previous personal data of individuals after legal gender recognition.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognized in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

22.1 Is the right of a legally recognized transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

Polish legislation does not address the issue of marriage for legally recognized transgender individuals as it is invisible in the Polish legal and social reality. Under Art. 18 of the RP Constitution, marriage is a union between a man and a woman, identified on the basis of their official legal status. The existence of remarks on gender reassignment does not affect the right to marry. This means that a person who has changed gender can then marry their partner of the opposite gender to his or her new gender.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor’s pension benefits and tenancy rights.

23.1 Does legislation confer rights and obligations on unmarried couples?

Regulation of the Minister of Education, 28 May 2010 r.
As a matter of principle, legislation 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 (partners, cohabiting partners) are in most cases considered unrelated for legal purposes. The few existing provisions that do address unmarried couples are usually interpreted in a way that excludes same-sex couples from their application.

The definition of cohabitation does not refer to the partners’ gender. The Polish case-law is also anything but consistent on this issue. On the one hand, the Supreme Court (which has never heard a case concerning a same-sex couples) stated in its several judgments that the partners being of different genders is an inherent element of cohabitation. On the other hand, the Court of Appeal in Białystok, in its judgment of 23 February 2007 (I Aca 590/06), held that the partners’ gender is immaterial for the examination of cohabitation. The judicature has problems with provisions that refer to such terms as next of kin (e.g. under Art. 182 CCP, the defendant’s next of kin may refuse to testify in court if the testimony might affect the defense) or a “person remaining in de facto marital cohabitation” (e.g. under Art. 691(1) CC, such person succeeds to tenancy after the death of his or her partner).

This problem was not resolved with the ECHR judgment of in Kozak v. Poland of 2 March 2010 (application No. 13102/02). The ECHR found that Poland’s refusal to allow the same-sex partner of a deceased tenant to succeed to the tenancy of a municipality flat was discriminatory and in breach of the right to family life. NGOs continue to receive information about cases of refusal to allow a partner to succeed to a tenancy.

Apart from ambiguous case-law concerning provisions that would allow same-sex partners to benefit from rights enjoyed by unmarried couples, the most important problems showing that the State has failed to follow this recommendation are the following:

- no entitlement to file joint personal income tax declarations,
- the obligation to change one’s surname under the general procedure for doing so (there is no procedure that would automatically allow a person to change his or her name to his partner’s),
- a disadvantaged position under social insurance provisions (in many cases, the social insurance system recognizes marriage and grants a spouse specific benefits, such as survivor’s pension or the right to higher pension benefits if the deceased spouse received a higher pension),
- no right to joint health insurance,
- no entitlements enjoyed by spouses in the event of the other spouse’s health problems (right to visit him or her in hospital or make decisions on his or her behalf where the illness prevents the partner from making conscious decisions),
- no right to succeed to the partner’s estate in cases of intestacy,
- statutory legatee (forced share) for the descendants, spouse, and parents of the testator where

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he or she called his or her partner to succeed,
- the provisions on the inheritance and gift 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 take a leave to provide care to ill partner,
- no right to apply for survivor’s pension on the same principles as spouses,
- no right to allow the partner to access funds deposited in one’s bank account in the event of death (with the funds excluded from the inheritance if this was possible),
- no right to bury one’s partner,
- no right to protect one’s deceased partner’s moral rights to copyrighted work,
- no adoption of a child by the partner of the child's birth parent or obtaining custody of the child.

If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?

The State takes no action to comprehensively ensure that these rights and obligations are extended to same-sex couples. The experience of NGOs shows that individual State bodies very rarely get involved in cases of discrimination against same-sex couples. This usually happens after the intervention of LGBT organizations. In practice, where this is possible, same-sex partners resolve any difficulties by concluding relevant contracts (powers of attorney). However, if the law requires no such additional measures from opposite-sex partners, it is justified to argue that this situation is clearly discriminatory.

Proposals for the National Action Plan for Equal Treatment included the aim of developing either an bill amending the relevant laws to ensure the legal recognition of the rights and obligations of same-sex couples or a Civil Partnership Bill. According to the plan, the bills would come into being within the next year, with the regulations coming into effect in 2 to 5 years.

24. Where national legislation recognizes registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

24.1 Does legislation recognize registered same-sex partnerships?

Polish law does not provide for registered same-sex partnerships. Poland’s supreme legislation
states that marriage as a union between a man and a woman is under special protection of the State. This is a widely used argument that same sex unions of any kind are not allowed according to Polish legislation (Art. 18 of the RP Constitution, Art. 1 FGC). The wording of these provisions, particularly of the Constitution, is the major argument raised by those opposed to registered same-sex partnerships against any amendments to the existing laws. The reality is that same-sex partners are denied both typical “marital” privileges and the right to demand protection for their de facto marital relationship from the State. Various studies have shown that the existing legal situation is discriminatory towards a group including from several hundred thousand to one million people. The restrictive provisions affect not only residents of Poland, but also Polish nationals willing to contract marriage or enter into a civil union outside the country. Registrars refuse to issue them with certificates of legal capacity to contract marriage abroad if they find out that the marriage or civil partnership is going to be a same-sex union.

A study\(^{187}\) conducted by KPH in years 2010-2011 (not yet published) shows that Poland is home to about 2-3 million gays and lesbians, with over 43% remaining in same-sex relationships. About 40% of the relationships was described as long-term, lasting for over 3 years. At the same time more than 40% of persons cohabiting with their partners were hiding it. 98.1% of the homosexual respondents said, in 2010, that they were in favor of legal recognition of same-sex relationships and over 86.6% would like to enter into a registered partnership\(^{188}\). Studies commissioned in 2008 by the MPiPS showed that 86% of gays and lesbians would like to see registered partnerships introduced in Poland, with 74% who wanted to be allowed to marry\(^{189}\).

Registry offices prevent Polish citizens from entering into registered partnerships abroad by refusing to issue them with certificates of legal capacity to contract marriage abroad, arguing that given the wording of the relevant provisions, marriage may only be contracted by two people of opposite sexes\(^{190}\). Court judgments in cases of appeals against such refusals are inconsistent. On the one hand, some of them support this practice, finding that a same-sex marriage or registered partnership concluded or entered into abroad would pose a risk of the Polish spouse or partner requesting that the marriage be entered in the Polish registry office records, thus forcing the Polish State to recognize it (so held the Circuit Court (Sąd Okręgowy) in Warsaw in its order of 16 February 2012, file No. VI Ca 860/11). On the other hand, other courts find that „a citizen has a right to request such a certificate without justifying the request and a refusal may by no means be justified the citizen’s motivation revealed by the body” (Voivodship Administrative Court in Gdańsk in its judgment of 6 August 2008, file No. III SA/Gd 229/08). As it transpires from cases monitored by NGOs, the certificates are denied only to applicants whose partners’ names allow a registrar to establish if the partner is of the same sex as the applicant. Apart from violating the principle of


\(^{188}\) Report on discrimination and intolerance on grounds of sexual orientation in Poland in 2002 [Raport o dyskryminacji i nietolerancji ze względu na orientację seksualną w Polsce w 2002 r.].


\(^{190}\) Registry Office, decision of 9 November 2010.
equal treatment, such practice of the State is a flagrant breach of the right to privacy, right to right to move and reside freely within the territory of any EU member State and enjoy the rights provided for in the state’s legislation (Art. 21 of the consolidated Treaty on the Functioning of the European Union). In response to a petition concerning the certificates filed by Polish NGOs, the Committee on Petitions of the European Parliament found this practice of the Polish administrative bodies to be discriminatory and inadmissible\textsuperscript{191}, while Viviane Reding, EU Commissioner for Justice and Fundamental Rights, said in a statement\textsuperscript{192} for Poland’s \textit{Rzeczpospolita} daily of 2 February 2011 that each citizen has a right to obtain a certificate of his or her civil status.

It should be noted that from 2007 to mid-2011 registry offices refused to issue a certificate of legal capacity to contract marriage abroad because of the applicants and their partners being of the same gender on eight occasions\textsuperscript{193}. According to KPH this number might be significantly larger due to the practice of the offices not to issue decision in every such case, but in some of them giving verbal denial to the client without registering the case.

25. Where national legislation does not recognize nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

\textbf{25.1 If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?}

Initiatives to introduce registered partnerships (by drafting relevant bills) were taken on many occasions, in 2004 and in the last term of the Sejm. Each time there was no political will to actually pass the submitted bills. In this term of the Sejm, two bills on registered partnerships were filed simultaneously. They have been rejected by Sejm during voting in July. In August a new bill has been introduced by the ruling party MPs. It has not been voted on yet.

Separate measures are taken to amend the procedures for issuing certificates allowing Polish citizens to enter into a registered partnership or contract marriage abroad.

For many years the political and social climate has been unfavorable for the introduction of registered partnerships. In 2008, the spokesperson for the Prime Minister, answering a question

\begin{footnotesize}
\begin{enumerate}
\item Petition No. 0632/2008.
\item Letter of the Minister of Interior of 8 February 2012.
\end{enumerate}
\end{footnotesize}
asked by the LGBT community about the Government’s plans concerning registered partnerships, said that “the Council of Ministers has not and will not deal with this matter (...). The Government will not undertake the initiative of this community, which submitted to the Prime Minister a bill regulating this matter”. The previous Government Plenipotentiary for Equal Treatment said on 21 November 2009 that “today there is neither social nor political climate for enacting legislation concerning the relationships of homosexual people”. Decisions taken by politicians are to a large extent the consequence of divisions within society and the lasting lack of support for such solutions. A 2010 CBOS study showed that there are more opponents (47%) than supporters (45%) giving LGB people a right to enter into non-marital registered partnerships, thanks to which they would have property rights enjoyed by married couples, e.g. the right to file joint tax declarations or to inherit after the death of their partners. TNS OBOP studies conducted a year later show that this proportion is slowly beginning to change in favor of the supporters (with 54% of the respondents for and 41% against such legislation). Initiatives aimed at allowing same-sex couples to marry are even less popular. 78% of respondents said they were against, with only 16% in favor (in the TNS OBOP study the results were 68% and 27%, respectively).

Much controversy broke out while scrutinizing bills concerning registered partnerships, introduced in the current Sejm. The controversy concerned the Speaker’s practice of referring bills inconvenient for the ruling coalition (which the Speaker belongs to) to the Legislative Committee for examination of conformity with the existing laws. According to media reports and NGOs’ observations, so far, in a vast majority of cases, this procedure has been used to examine bills introduced by the opposition, particularly those concerning moral issues. The Legislative Committee (whose members are mostly coalition MPs) may find a bill to be in contravention of the existing laws, which, under the Standing Orders of the Sejm, empowers the Speaker to withdraw the bill from further procedure. This mechanism has been dubbed “the Sejm shredder”, as it practically disqualifies a negatively verified bill from further procedure. Both introduced registered partnership bills were referred for such verification. On 28 June 2012, the Legislative Committee issued a negative opinion on both bills, arguing that they were likely to be in contravention of the Constitution (mainly of Art. 18, which stipulates that marriage is a union between a man and a woman). Concerned about the prospect of the Speaker blocking further legislative work on the bills, the LGBT community organized a protest to convince her to refer them for further legislative work. Eventually, the Speaker agreed. They have been rejected by Sejm during voting in July. In August a new bill has been introduced by the ruling party MPs. It has not been voted on yet.

196 See http://wyborcza.pl/1,75478,9696907,Gej_przestraszyl_Platforme.html.
Work is currently in progress on the amendment of the template application for a certificate that would exempt applicants from the obligation to provide the particulars of their future spouses or partners (initially, the MSW was supposed to draft a bill by the end of March 2012\(^{199}\), but because many reservations were made “concerning the amendment of the template for the certificate, a decision was taken to engage in further consultations with the MS and the MSZ”\(^{200}\)). The initiative was endorsed by both the Human Rights Defender\(^{201}\) and the Plenipotentiary for Equal Treatment. Unfortunately it seems like it will still take time until the template is amended – MP Robert Biedron asked the MSW on that issue and was given an answer that a whole act which includes the template must be amended for different reasons, and thus works to change the template itself have been discontinued.

26. Taking into account that the child’s best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

26.1 What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on sexual orientation or gender identity?

26.2 In practice, are such decisions taken on a non-discriminatory basis?

There is no legislation in Poland stipulating that a parent’s sexual orientation has any effect on decisions concerning parental responsibility for 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, the fundamental principle of Polish family law. It is spelt out in Art. 18 of the RP Constitution and reaffirmed in specific provisions of family law (Art. 93 and 113 (2) FGC). In practice, however, arguments concerning a parent’s sexuality are repeatedly raised in parental responsibility or custody proceedings. Also opinions of expert witnesses and diagnostic centers involved in proceedings concerning parental responsibility use sexual orientation as an argument against a parent. Based on observations made by NGOs, opinions issued for the purposes of such proceedings are laconic and biased. Although they rarely refer directly to a parent’s sexual orientation, 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

\(^{199}\) Letter of the Minister of Foreign Affairs of 25 November 2011.

\(^{200}\) Letter of the Minister of Interior of 30 April 2012.

\(^{201}\) Letter of the Human Rights Defender to the Minister of Interior of 15 March 2011: “this type of certificate template is inconsistent with the requirements of Art. 71 of PACS, but first of all with the principle of the democratic state of law, expressed in Art. 2 of the Constitution of the Republic of Poland. Therefore, there is no legal basis for indicating the particulars of the person whom the petitioner intends to marry.”
instability”, or “maintaining contacts with the wrong community” that are at least indirectly an expression of a negative assessment of such person’s parenting competence. Although the courts also do not directly address a parent’s homosexual orientation, it does, in most cases, coincide with awarding parental responsibility to the other parent. For example, although MS figures show a clear preference of the courts to award parental responsibility to mothers, in the case of lesbian mothers, they often rule to the contrary and award it to the father. It should be noted, however, that the first judgments have appeared that explicitly stress that sexual orientation cannot be raised as an argument against awarding parental responsibility to a parent (cases No. 117, 118).

27. Taking into account that the child’s best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

27.1 What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on sexual orientation and gender identity?

27.2 In practice, are such decisions taken on a non-discriminatory basis?

There is no legislation in Poland stipulating that only a heterosexual may adopt a child. Among the requirements provided for in FGC that a person wishing to adopt must meet are the following: capacity to act in law, no criminal record, appropriate age difference, appropriate financial standing and housing situation, and personality traits and morals that ensure the proper exercise of the rights and obligations involved in parental responsibility (the pursuit of the child’s best interest). This means that theoretically it is legal in Poland for a single homosexual to adopt a child. In practice, because of the vagueness of the term “the child’s best interest”, a biased adoption centre officer or judge may assess a person’s capacity to safeguard the child’s best interest through the lens of his or her own beliefs. Homosexuality is often found to be a reason to believe that a person is not able to do that and is thus used as an argument against allowing him or her to become an adoptive parent. What is more, the position of singles is often much worse in adoption procedures, compared to that of married couples. NGOs know nothing about any actions taken by the State to

202 M. Zima, Prawo osób homoseksualnych do życia rodzinnego – prawo do wychowywania własnych dzieci [Right of homosexual persons to family life – the right to bring up own children], (in:) M. Zima (ed.), Tęczowe Rodziny w Polsce. Prawo a rodziny lesbijskie i gejowskie [Rainbow families in Poland. The law and lesbian and gay families], KPH, Warsaw 2010, from p. 33.

203 According to statistical information for 2006, out of the total of 45,024 decisions to award parental authority, the mother and the father were awarded parental authority in 27,792 cases and a mere 1,731 cases respectively.

204 Refer to 181.
comply with this recommendation. Stereotypes still have a strong effect on the belief that homosexual people should not raise children. A 2008 PBS DGA study showed that 79% of the respondents did not want homosexuals to have a right to adopt children. A reflection of this attitude may be the amendment to the Family Support and Foster Care Act of 28 April 2011 proposed by the Senate in May 2011, which would have entrusted foster care and running family children’s homes solely to people who are not homosexuals. Eventually, the Sejm did not adopt the amendment, which eliminated the Senate’s proposal.

In November 2009, much controversy was sparked by the case of a gay activist, described by a national daily, who published an instruction on how he believed gays could bypass the law and adopt children. This was supposed to happen by the interested gay man striking a deal with a future mother (unwilling to raise her child herself). As part of the deal, both parties would have to make a statement in the Registry Office to the effect that the man is the child’s father. In reaction to the instruction, several right-wing politicians announced they would work on a statute to prevent gays from adopting, while the spokesperson for the police said he believed the case should be examined to check if it could involve trafficking in human beings.

Transsexuality is not addressed in any documents or legislation concerning family life, neither in terms of adoption nor child custody. However, cases reported to the Trans-fuzja Foundation show that people wishing to undergo gender reassignment usually prefer to wait until their children come of age to make sure the legal changes involved will not affect their relationship with them.

They are concerned about their relationships with their children are not only because of the necessary changes in their legal status but because of the potentially problematic relations between both parents. This problem usually affects divorce transsexuals who have custody of their children.

Since there are no relevant regulations, no issue surrounding transsexual parenting is clear. Although Polish gender recognition procedures do not require a person to be sterilized, NGOs do not know of anyone who has had children (i.e. has conceived or given birth) after gender reassignment. The parenting status of such a person would most likely be difficult to determine, taking into account the genderized categories of mother and father (especially mother) in FGC. Art 61 (9) FGC defines mother as „the woman who gave birth to it” [the child], which would pose a major interpretation challenge in the case of a man giving birth. Fatherhood, in turn, is automatically associated with men. Even though Art. 85(1) FGC contains the following gender-neutral provision: “it is presumed that the child’s father is the one who had intercourse with the child’s mother not earlier than on the three hundredth and not later than on the one hundred and eighty-first day before the child’s birth”, the following section explains who may be the father: “The circumstance that in this period the mother also had intercourse with another man may be a

ground for the rebuttal of the presumption only where the circumstance makes the other man’s fatherhood more probable”. Polish law provides no clear definition of man or woman. However, the practice (e.g. enjoyment by a person whose gender reassignment has been recognized of the right to marry) suggests that gender is mostly determined by civil status.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

28.1 What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?

28.2 In practice, is such access granted on a non-discriminatory basis?

Poland has no legislation regulating assisted reproductive techniques. As a matter of principle, assisted reproductive treatment can be obtained privately and is not financed by the state. The only related service provided by the State is insemination. In practice, access to such treatment is not free from discrimination against single women and women in same-sex relationships. As there is no legislation to regulate these matters in Poland, the Polish Gynecological Society (PTG) developed a collection of good practices concerning assisted reproduction in infertility treatment, expressed in PTG’s policy statement of 1996. The issue of ensuring that single women have access to assisted reproductive treatment was not addressed in the document. The PTG states that treatment of infertility or sterility concerns only married couples or “heterosexuals remaining in a long-term personal relationship”.

The issues surrounding assisted reproduction (particularly in vitro as the method that attracts the greatest publicity), when mentioned in the context of lesbian motherhood, spark much controversy. Discriminatory statements often make it to the media, with the public bodies supposed to react remaining inactive (case No. 119). Based on information provided by KPH’s clients, in vitro fertilization is not available everywhere if the would-be patient discloses that she has no husband or a male partner. However, lesbian web portals provide information on lesbian-friendly clinics. Gay women try to solve this problem through natural insemination or by signing an agreement in which the biological father waives his rights to the child. NGOs have recorded no statements made by representatives of the authorities condemning such practices. Because of little social acceptance and the inaction of the public authorities, the issues surrounding motherhood of single women and lesbian couples remains in


208 M. Zima, Prawo osób homoseksualnych do życia rodzinnego – prawo do wychowywania własnych dzieci [Right of homosexual persons to family life – the right to bring up own children], (inc.) M. Zima (ed.), Tęczowe Rodziny w Polsce. Prawo a rodziny lesbijskie i gejowskie [Rainbow families in Poland. The law and lesbian and gay families], KPH, Warsaw 2010, p. 36.
the underground; in practice, the problem is solved thanks to friendly clinics, which provide insemination or \textit{in vitro} treatment.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimization.

29.1 \textit{Does legislation exist which prohibits discrimination in employment in the public and private sector on grounds of sexual orientation and gender identity?}

Polish law prohibits discrimination in employment on the grounds of sexual orientation, both by public and private sector entities. The principle of equal treatment and prohibition against discrimination in political, social or economic life for any reason whatsoever enshrined in Art. 32 of the Constitution are reflected in statutory provisions that make up the Polish labor law system. The LC, in its Art. 11\textsuperscript{3}, prohibits any discrimination in employment, direct or indirect, on the grounds of, including but not limited to, sexual orientation. A violation of the principle attracts liability to damages (Art. 18\textsuperscript{3d} LC). To safeguard this prohibition, an employer is to counteract such discrimination (Art. 94 LC). Another piece of labor law legislation that contains anti-discriminatory provisions is the (AoPELMI), which specifies the state’s obligations concerning the promotion of employment, mitigation of the effects of unemployment, and occupational activation. The provisions of the statute are aimed at safeguarding the principle of equal treatment in the access to labor market services and instruments, without discrimination on the grounds of, including but not limited to, sexual orientation (Art. 2a AoPELMI). The third statute containing such provisions is the AoET. Its adoption was necessary to implement certain EU directives, including, for example, the following: 86/613/EEC, 2000/43/EC, 2000/78/EC, 2004/113/EC and 2006/54/EC.

The three statutes referred to above 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). They also provide for a fine starting from PLN

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\textsuperscript{210} Act of 20 April 2004 on promotion of employment and labor market institutions (unified text of 9 April 2008, Journal of Laws No. 69, item 415).
3 000 for violations of the prohibition against discrimination in employment committed by an employment agency or an employer (Art. 121(3) and Art. 123 AoPELMI).

Despite numerous concerns raised by NGOs about the state’s anti-discrimination policy, particularly about the recent, long-awaited AoET (hasty and sloppy legislation with serious errors, e.g. a wrong definition of indirect discrimination in both AoET and LC\textsuperscript{211}, the acceptance of the possibility of multiple discrimination without conferring on the victim a right to bring multiple claims, or different levels of protection depending on the ground for discrimination), it appears that the application of these provisions ensures a right to protection against discriminatory treatment. This applies to employment under labor law (based on an employment contract) as well as based on civil-law contracts (contract of mandate or contract for specific work). The statute also imposes obligations on employment offices, which, under Art 36(5) AoPELMI, may not accept a job offer if any of the employer’s requirements may be discriminatory towards jobseekers, including on the ground of sexual orientation.

29.2 Does the legislation cover:
   a) access to employment (including recruitment); promotion,
   b) dismissals,
   c) pay
   d) harassment and other forms of victimization?

Legislation concerning anti-discrimination in employment covers all the areas listed in the question.

Art. 18\textsuperscript{3b}(1)(1-3) LC deems the principle of equal treatment to be violated if LGBT employees are subject to unjustified unequal treatment during the conclusion, duration and termination of the employment relationship; in determining remuneration and other conditions of employment; in access to promotion and benefits related to employment; and in the protection of professional development and in participation in professional training. This protection includes also the contents of job advertisements published by employers (e.g. in a newspaper). If an offer includes requirements that may be discriminatory towards a candidate on the grounds of sexual orientation, he or she may bring an action to the labor court for damages.

Among the forms of discrimination, LC lists harassment, including sexual harassment. These are prohibited under Art. 18\textsuperscript{3a}(5)(2) and Art. 18\textsuperscript{3a}(6) LC. Anti-discrimination provisions also regulate the scope of information that a candidate or an employee may be obliged to disclose to his or her employer. The catalogue of data subject to such disclosure in Art. 22\textsuperscript{3}(1-2) LC does not include

\textsuperscript{211} Pursuant to Art. 183a § 3 of the LC, “direct discrimination occurs when in a comparable situation an employee, on grounds of his or her sexual orientation, was, is or could be treated less favorably than other employees.” This definition is inconsistent with the definition contained in EU directives as it indicates a hypothesetical nature of discrimination instead of attributing hypothetical character to the behavior with which discriminatory behavior is compared. Thus, theoretically, it is possible to claims damages in a situation where unequal treatment has not yet occurred.
sexual orientation.

In the event of termination of employment that may qualify as discriminatory, an employee may file for the following: the declaration of the notice of termination ineffective, his or her reinstatement on his or her previous position on the same conditions, or damages (Art. 45(1), Art. 56(1) LC). Where an employer gravely violates his basic obligations towards an employee, the latter may terminate the employment contract without notice and claim reasonable damages (Art. 55(1) LC). The fact that an employee has exercised any of his rights referred to above may not justify any unfavorable treatment by the employer, including when an employee has provided any support to a person exercising his or her rights in respect of a violation of the principle of equal treatment in employment (Art. 183e LC).

With the AOET coming into effect, the scope of protection against discrimination on the grounds of sexual orientation was extended to include the following areas (Art. 8 AoET): vocational training, advanced 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 labor market instruments and services.

29.3 Have the authorities promoted other measures to combat discrimination, harassment and victimization, in both the public and private sectors, for example:

   a) adoption of codes of conduct for both employers and employees;
   b) training and awareness raising programs for both employers and employees;
   c) distribution to employees of materials explaining their rights, complaints mechanisms and remedies;
   d) recruitment efforts directed at LGBT persons;
   e) the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;
   f) co-operation with and support for employee groupings of LGBT persons?

So far the authorities have taken up few initiatives to promote measures to combat discrimination against LGBT persons in employment, both in the public and private sectors, despite the fact that as early as in 2008 Poland was urged to promote provisions counteracting discrimination on the grounds of sexual orientation and gender identity in employment by the European Committee on Social Rights212. The Ministry of Labor and Social Policy is involved mainly in projects concerning discrimination in employment on the grounds of age, sex, or disability. The need to counteract discrimination against LGBT employees on a systemic level is only slowly starting to be recognized. The Ministry’s Strategies for the Support of Civil Society Development for 2007-2013 and 2009-

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212 See http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Polan08X1_en.pdf.
2015 do stress, in Activity 4.3 (Corporate Social Responsibility), that the growth of the idea of corporate social responsibility and its practical manifestations requires in particular “the promotion of the idea of diversity in the work environment and the principle of equal treatment of all employees irrespective of, including but not limited to, sex, race, ethnic origin, religion, beliefs, age, and sexual orientation”. However, NGOs know nothing of any specific action taken when implementing these policies. Up to the present moment, all the Ministry has done is organize several trainings and provide financial support for but a few projects run by NGOs (cases No. 94, 95, 120).

Also, no recruitment projects are launched addressed specifically to LGBT workers. Poland has no LGBT employee groupings. The only development related to trade unions aimed at promoting the equal treatment of LGBT employees was the creation of the position of Plenipotentiary for Gays and Lesbians, entrusted to a former LGBT NGO activist, by the All-Poland Alliance of Trade Unions (OPZZ), one of the three largest trade union centers in Poland, with over 700,000 members. His task, apart from directly contacting victims of workplace discriminations, is to work for the general improvement of employees’ and employers’ awareness of discrimination-related issues. On 15 July 2010, as part of EUROPRIDE, OPZZ held a conference entitled “Towards Equal Treatment of LGBT Employees in Central and Easter Europe”. It should be borne in mind, however, that OPZZ is not a public body.

The public Equality Bodies also fail to show appropriate interest in this area of discrimination. The website of the Plenipotentiary for Equal Treatment features two booklets providing basic information on discrimination in employment (what discrimination is, how to recognize it, what should an individual do if he or she believes to be discriminated against), including discrimination on the grounds of sexual orientation. However, the brochures are not visible enough on the website. Furthermore, they are in fact scans, which results in a long opening time and further restricts access to potentially useful information.

It should be noted with satisfaction that the authorities currently take up no initiatives clearly discriminatory towards LGBT individuals in employment, such as the 2008 idea of the then-Ombudsman for Children to develop a list of professions from which homosexuals would be banned, including teachers. However, there is still no sufficient action to properly promote the principle of equal treatment, including towards LGBT employees.

29.4 Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of sexual orientation and gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?

In principle, the Polish legislation contains no provisions of law discriminating against LGBT employees as regards access to career advancement.

Under Art. 18(1)(2-3) LC unequal treatment of an employee by an employer is any discriminatory treatment, including on the grounds of sexual orientation, that resulting in e.g. passing an employee over in providing access to vocational training. Also Art. 8(1)(1) AoET prohibits unequal treatment of natural persons on the grounds of sexual orientation as regards vocational training including professional in-service training, re-training and traineeship, whereas AoPELMI obliges employment offices to support employers and employees in career advancement by providing vocational advice in line with the equality principle and irrespective of sexual orientation (Art. 38 (2)(2) AoPELMI). Training courses for the unemployed organized by a starosta (head of county authorities) from the Labor Fund (Fundusz Pracy) aimed at improving their vocational skills should be conducted in line with the equality principle and irrespective of sexual orientation (Art. 40 (6) AoPELMI).

Despite the wording of the existing provisions of law, NGOs observe recurring instances of hindering the access to career advancement of employees suspected or known by the employer to be non-heterosexual.

As regards the armed forces, the position of the Minister of National Defense (MON)\textsuperscript{214} stating that LGB persons have the same rights to career advancement as heterosexual persons, should be emphasized. Nevertheless, LGBT organizations do not have data on the actual situation.

\textbf{29.5 Specifically in relation to the armed forces: have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment? Do codes of conduct and training of the conscripts address the need to combat discrimination against LGBT persons and promote tolerance and respect?}

The Ministry of National Defense (MON) has already taken first steps to combat discrimination, such actions, however, merely signal the LGBT issues. Moreover, LGBT organizations observe that the army command still does not consider discrimination against LGBT persons to be a serious problem. Given a high degree of stigmatization of the phenomenon and specific nature of the military service, currently it is difficult to assess the situation of LGBT persons in this area. Transgender persons are not allowed to serve in the army.

The Program for strengthening discipline, combating addictions and preventing social pathologies in the Armed Forces of the Republic of Poland in 2012-2013 informs that within that period, the following actions, assumed to counteract behavior discriminating against LGBT persons, have been planned:

- a series of classes on human rights protection pursuant to the recommendations of CM/Rec.

\footnote{214 Letter of the Minister of National Defense of 4 April 2012.}
2010/4\textsuperscript{215} (2 classes in 2012, 2 classes in 2013), followed by obligatory classes conducted for soldiers “as part of the duties” with an aim to “raise the awareness of all soldiers on the issue”;

- trainings for soldiers and army employees on aggression, conflicts, stress and violence (mobbing, stalking, harassment, discrimination) – in 2012, 7 training sessions are to be held for 200 people and another 8 sessions for 200 people in 2013;

- development and distribution of informational and educational material on equal treatment in work and service environment (circulation of 3,000 copies);

- development and issuing of information booklet on mobbing in 2012 (1,000 copies).

Moreover, MON data indicate that soldiers obtain information on sexual orientation and sexual harassment as part of the currently held educational training. In 2011, an educational brochure on equal treatment was issued. Nevertheless, non-governmental organizations lack data allowing to assess both present and future actions of the ministry as regards combating discrimination against LGB persons. It is not known either whether such training is conducted by qualified staff.

The MON emphasized that to-date they have not received any reports from soldiers which would indicate that bullying or cruel initiation rituals take place with regard to LGB persons\textsuperscript{216}. NGOs find, though, that non-heterosexual orientation is strongly stigmatized in the armed forces. LGBT persons tend not to disclose information on their sexuality. Despite the fact that, as some sources state, the percentage of LGB persons doing military service is higher than in the society (ca. 10%-15%)\textsuperscript{217}, the LGBT non-governmental organizations receive a very low number of reports on discrimination in that environment.

It should be noted that in December 2008 the last conscription to the Polish Armed Forces took place. Since then, military service in time of peace is done solely by volunteers as part of a professional military service (regular or contract) or non-professional military service (candidate, preparatory or temporary military service, military training of the reserve).

\textbf{29.6 Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?}

Gender identity does not constitute a discrimination ground in the Polish law. Discrimination on grounds of transsexuality or gender reassignment can be perceived as discrimination on grounds of

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\textsuperscript{215} Recommendation of the Committee of Ministers to member states of the Council of Europe on human rights of members of the armed forces.
\textsuperscript{216} Letter of the Minister of National Defense of 4 April 2012.
\textsuperscript{217} See http://archiwum.polityka.pl/art/tajemnica-wojskowa,369590.html.
\end{flushleft}
gender, given Directive 2006/54/EC\textsuperscript{218}, established case-law of the European courts and legal doctrine.

The European law, however, does not protect persons who have not decided to change their gender in the documents. This means that persons dissociating themselves from traditional ideas of gender identity or gender expression are still exposed to discrimination. Lack of knowledge about the existence of relevant EU regulations has an adverse impact on their observance. Neither employers nor even transgender persons themselves are aware that the rights of T persons can be asserted before the labor court. Discrimination against persons having their gender reassigned, as well as discrimination on grounds of sexual orientation is very often masked with other reasons, most often ones related to the employee’s behavior or the quality of their work.

Given the amendment to the Act on general defense obligation of the Republic of Poland\textsuperscript{219}, the Polish army has transformed into professional military service and become a place of employment subject to relevant provisions on combating discrimination. Nonetheless, that did not change the status of transsexual and intersexual persons, who – pursuant to the Regulation of the Minister of National Defense on determining fitness for active military service and the procedure followed by military medical commissions (2004 No. 151, item 1595), the Regulation of the Minister of National Defense amending the regulation on determining fitness for active military service and the procedure followed by military medical commissions (2006 No. 211, item 1557), as well as the Regulation of the Minister of National Defense on determining fitness for service in the Military Counterintelligence and Military Intelligence, as well as competence of military medical commissions and the procedures they follow in that respect (2006 No. 176, item 1304) – they are not allowed to serve in the military.

Transsexuality and intersexuality are listed in the appendices to the above-mentioned documents as illnesses and defects when assessing physical and mental fitness for active military service, and in Chapter 1 concerning the human body, as transsexuality and hermaphroditism (thus as medical terms). In 2011, the Trans-fuzja Foundation and KPH exchanged letters with MON on the subject of validity of such regulations. Despite listing transsexuality and intersexuality in the chapter on the human body, MON justified the validity of excluding those two groups with “specific psychological situation”, which suggests not only insufficient knowledge on transgenderism and intersexuality, but also mismatch between the regulations and actual reasons behind excluding those groups from active military service.

\textbf{29.7 Have employment programs focusing specifically on employment opportunities for transgender persons been developed?}


There are no employment programs focusing specifically on transgender persons. The MPIPS does not recognize transgender persons as a specific social group in need of special training and programs.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

30.1 Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?

See point 21.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

31.1 Have (a) equality and safety policies and (b) codes of conduct for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?

The policies and standards which would ensure equal treatment and safety of LGBT persons in schools are still insufficient.

Many schools deny the existence of LGBT students. Students who complain about homophobia at school (cases No. 66, 67, 68) often turn to KPH. They experience homophobic behavior, not only from other students but also from teachers, educators, and especially priests, nuns and catechists conducting religion lessons. The teachers who admitted being non-heterosexual (case No. 69)
become themselves victims of discrimination.

There is still no political climate conducive to the implementation of relevant equality policies in the educational system. The present situation is well illustrated by the statement of the Minister of Justice referring to the Council of Europe convention on preventing and combating violence against women and domestic violence. The MS underlined that the document serves the purpose of promoting homosexual relationships\textsuperscript{220} and can lead to children learning at school that it is possible to have two fathers or two mothers.

The study „Polish psychology and homosexuality” conducted by KPH in 2010 revealed that many academic teachers of psychology, a field of study which should take into account the LGBT perspective to the greatest extent, have very little knowledge of homosexuality and express biased and stereotypical opinions. A letter was sent to 130 randomly selected academic teachers, in which a fictitious student was asking about the position of psychology on basic issues of homosexuality. The answers have shown that the knowledge possessed on the subject by academic staff in psychology departments is either scarce or out-of-date. Most of the respondents could not or did not want to answer the question whether homosexuality is a disease and if sexual orientation can be treated or changed, thus overtly admitting their own incompetence. The results of the study raise concerns as there is fear that the academic staff is unable to professionally conduct didactic activity in that respect. Unfair and untrue statements present in some answers, tend to be directed to student and strengthen prejudice. KPH passed the study results to the Polish Psychological Association (PTP) which also expressed their concern and stated the need to take proactive measures to change the present situation. PTP committed to prepare a series of addresses to the authorities of higher education institutions having a psychology department, publish a relevant academic work and raise that issue at the Scientific Conference.

Higher education institutions still give consent to organize under their auspices lectures/presentations of people who openly utter homophobic comments about LGBT persons (cases no. 70 and 71). It is true that the Ministry of National Education (MEN) in the regulation adopted in 2008 on the core curriculum of preschool education and education in various types of schools\textsuperscript{223} introduced content aiming at combating discrimination on grounds of sexual orientation, however it is only declaratory in nature and has not been implemented in practice. Certainly, there are positive examples in individual educational units, nevertheless they are rather exceptions to the rule (case no. 122).

Lack of changes in that respect is also influenced by the fact that education in Poland is largely dependent on the local government authorities often composed of politicians openly declaring

\textsuperscript{221} See http://m.wyborcza.pl/wyborcza/1,105402,11592559,Gowin__Chce_zatrzymac_rewolucje.html.
\textsuperscript{222} Letter of the Polish Psychological Society (PTP) of 11 October 2010.
\textsuperscript{223} Ordinance of the Minister of National Education of 23 December 2008 on the core curriculum for preschool education and general education in specific school types (Journal of Laws 2009 No. 4, item 17).
intolerance to homosexual persons and their organizations. Neither is there sufficient institutional psychological support for LGBT pupils and their parents. Some measures are taken in that respect only by LGBT organization in large cities.

In 2008, KPH participated in preparing a publication entitled “Schoolmates. Bullying in schools. A guide for young people on how to prevent bullying”\textsuperscript{224}, co-financed with the funds from the European Commission. The publication contained, among others, results of studies on homophobia in schools, as well as advice for teachers and ideas for exercises for pupils. 270 persons participated in the research project (pupils, teachers and other school staff). The results indicate, among others, that: 1) over the last school year 40.3% of the respondents heard often or very often in their school somebody addressing a boy, or referring to him, as a “fairy”, “pansy”, “faggot”, “queer” etc., 2) in 96% such expressions were used by pupils and in 3.1% by teachers, 3) in 47.6% such expressions were used during a lesson, 4) 13.1% of the respondents admitted that they were under impression that over the last school year a pupil was humiliated, derided or physically attacked because he was gay or was suspected of being gay, 5) 62.2% of the respondents stated that nobody intervened nor defended persons subject to attacks or degrading behavior. However, public authorities did not take any steps to popularize that publication.

\textbf{31.2 Do training programs for teachers and other educational staff address the need to treat their LGBT pupils and students with respect and show how to detect and effectively respond to cases of discrimination?}

Such training programs do not address sufficiently any aspects related to proper treatment of LGBT pupils and students, neither do they show how to react properly to discrimination.

The research conducted in 2011 by the Polish Association for Anti-discrimination Education (TEA) as part of the \textit{Wielka nieobecna} (The Great Absent) project 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”\textsuperscript{225}. In practice, this leads to lack of elementary knowledge on anti-discrimination and results in a failure to take any actions to change the status quo. The offer of in-service teacher training units, the Centre for Education Development (the most important public institution responsible for in-service teacher training on the national

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\textsuperscript{225} M. Abramowicz (ed.) \textit{Wielka nieobecna. O edukacji antydyskryminacyjnej w systemie edukacji formalnej w Polsce} [The Great Absent. On antidiscrimination education in the system of formal education in Poland], Towarzystwo Edukacji Antydyskryminacyjnej, Warsaw 2011, p. 293.
\end{footnotesize}
level) and curricula of postgraduate studies for teachers still perpetuate stereotypes and biases as regards LGBT issues. Neither do they guarantee an option to participate in anti-discrimination training and workshops including issues of sexual minorities. Merely isolated training sessions are organized, which deal with such issues as Polish-Jewish relations or cross-cultural tolerance. There is no best practice as regards the matters of LGBT pupils and students (best practice has been developed only towards such persons as foreigners or disabled persons). Given the above, teachers have not been made sensitive towards identifying discrimination against pupils which belong to sexual minorities and have no skills as far as reacting to such discriminatory behavior is concerned. Sexual orientation continues to be a taboo in schools. Homophobia as a phenomenon is not discussed. Teachers often tend to treat homophobia as mere name-calling and do not see it is an dangerous as racism or anti-Semitism. Passiveness of teachers in the area of actions concerning LGBT issues is still influenced by an incident of 2006, when the contemporary Minister of Education (Roman Giertych) took a decision to withdraw the Council of Europe’s manual “Compass. A Manual on human rights education with young people”. The manual was withdrawn because it had content on human sexual orientation which did not correspond to the right-wing world view of the minister. In the opinion of a member of the Polish Teachers’ Union (ZNP) who participated in the Wielka Nieobecna project, “the fate of the manual with this famous chapter on the rights of persons with a different sexual orientation shows that teachers are generally not allowed to talk about some instances of discrimination. It suffices to thumb through textbooks for Introduction to Family Planning, to see that e.g. the problem of discrimination on the grounds of sexual orientation does not exist at all and I think that homophobic attitudes of many teachers have been perfectly reinforced by the decision of minister Giertych, and, as no one, including Minister Hall [subsequent Minister of Education], although we did appeal to her to publicly reinstate that subject and dissociate from Giertych’s decision, never did that although we had expected it to be done. Therefore, that decision has been sanctioned somewhere. What is more, changes in the textbooks, when a new core curriculum was being introduced and more of reliable textbooks had been withdrawn by reviewers, mostly church ones or from catholic schools, all this shows that this direction not to respect the rights of persons with a different sexual orientation has been made even more radical.”

According to KPH publication ‘The equality lesson’ (Lekcja równości) from 2012, teachers lack competence and skills to deal with homophobic bulling at schools. Half of them that more trainings on the subject would help them address homophobic incidents at schools properly. What is surprising is that more than half of the teachers admit that the subject of homosexuality is not present enough in the school curricula.

There are instances of positive actions in that area, however they are rather exceptions to the rule and are most often the initiatives of NGOs (cases no. 120, 123, 124).

### 31.3 Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organizations?
In principle, campaigns or cultural events aiming to counteract homophobia and transphobia in schools are mounted very rarely and they enjoy the support of the school authorities even more rarely if it is related to the participation of LGBT representatives.

In the past there were cases when representatives of LGBT organizations were not allowed to give talks or have meetings in public schools or to participate in trips with young people. In 2006 the contemporary Minister of Education refused to co-finance two-week workshops entitled “Do we need gender?”, organized by KPH and aiming at combating stereotypes about gender and sexual orientation. According to the Ministry, public funds could not be used to organize camps “propagating deviations”.

In practice, LGBT NGOs make efforts to be present in schools and it happens that they are refused by educational institutions.

However, it should be borne in mind that occasionally LGBT organizations manage to participate or organize events to combat discrimination against LGBT persons in schools and at higher education institutions. This largely depends on the attitude of the authorities as well as on previous experience in joint organization of such enterprises (cases no. 125, 126, 127). The cooperation between LGBT organizations and the Polish Teachers’ Union should be also noted as the ZNP strives to make LGBT issues present in their actions.

32. Taking into due account the over-riding interests of the child, member states should take appropriate measures to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

32.1 Is information on sexual orientation and gender identity provided in school curricula and sex and health education classes?

32.2 Is it provided in a respectful and objective manner?

32.3 Are LGBT pupils and students provided with the necessary information, protection and
support to enable them to live in accordance with their sexual orientation and gender identity?

Information about sexual orientation is present in the school curriculum. However, it is not provided in an objective and respectful manner. Neither are LGBT 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 LGBT 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. The curriculum does not seem to feature elements educating about transgenderism in the manner compliant with the current standards of human rights.

Syllabus for individual school subjects followed by public schools result from the core curriculum of preschool education and general education in schools adopted by the Minister of Education in 2008.227 In 2011, that normative act and the system of compulsory education of children and young people based on that act was analyzed by the Association for Anti-discrimination Education (TEA).228

The results of the analysis reveal that the core curriculum contains only marginal references to non-discrimination, including discrimination on grounds of sexual orientation. Homosexual and bisexual orientation is regarded as “sexual otherness”, which evokes pejorative associations with strangeness and oddity. There are no references to the scientific approach to sexual orientation and related concepts, i.e. homophobia,229 which results in lack of issues dealing with reasons behind discrimination and its consequences. No gender studies classes are available.

The analysis of the core curriculum and textbooks indicates that as regards the teaching of Polish, pupils have limited possibility to acquire anti-discriminatory competence with respect to sexual orientation. A lot depends on the sensitivity of the teacher, who in many cases selects textbooks and literary texts.230 No Polish textbook analyzed by the TEA contained information about sexual orientation.231 “It should be also noted that some of the authors of literary texts and material works of art presented in the publication, were bisexual and homosexual, however, their sexual

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227 Ordinance of the Minister of National Education of 23 December 2008 on the core curriculum for preschool education and general education in specific school types (Journal of Laws 2009 No. 4, item 17).

228 The results of analyses are contained in: M. Abramowicz [ed.] Wielka nieobecna. O edukacji antydyskryminacyjnej w systemie edukacji formalnej w Polsce [The Great Absent. On antidiscrimination education in the system of formal education in Poland], TEA, Warsaw 2011: http://rownosc.info/customers/rownosc/web/attachments/5854a827b481aadab5c8be9f4443cb25db5e483c.pdf.

229 Wielka nieobecna [The Great Absent], p. 107.

230 Wielka nieobecna [The Great Absent], p. 122.

231 Wielka nieobecna [The Great Absent], p. 144.
orientation was not mentioned whereas information on heterosexual orientation of others was revealed (providing information on marital status or children)".

Also history and civic education textbooks do not mention LGB persons\textsuperscript{232}. They seem to promote solely one model of family – the one created by heterosexual couples\textsuperscript{233}. There is no space for same-sex relationships nor gay or lesbian single parents.

"The subject of stereotypes concerning gays, lesbians, bisexual or transgender (transsexual) persons seems to be carefully avoided in the civic education textbooks. Similar approach is adopted in all fragments referring to human rights, discrimination and oppression – the authors list a number of issues, but again, discrimination against homosexual persons and their rights are not mentioned"\textsuperscript{234}.

The subject which, in line with the core curriculum, should take account of the human sexual life to the greatest extent is the “Introduction to Family Planning”. The very name of the subject suggests that family is the only institution ensuring the right and happy life. The subject is regulated by an additional Regulation of the Ministry of National Education (MEN)\textsuperscript{235}. The Regulation envisages that the subject, as compared to other subjects mentioned above, is not obligatory (parents or legal guardians who do not want their child to participate in the classes, inform the school director accordingly; pupils of age can resign from those classes themselves) and is to be conducted in the amount of 14 hours a year. According to the information gathered by KPH, the classes are conducted in ca. 70% of the junior high schools and ca. 46% of the teachers are neither sexologists nor psychologists but historians or civic education teachers with no additional training. Only 12% of teachers avail of textbooks to conduct lessons.

The core curriculum uses very general terms to specify contents which should be taught as part of the Introduction to Family Planning. This results in uncertainty as to the specific values and standards meant by the legislator and provides the authors of textbooks with a considerable freedom of interpretation. In practice, fragments concerning sexual orientation perpetuate stereotypes and biases, are based on false 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 currently adopted scientific definitions of such concepts as homosexuality, bisexuality and heterosexuality.

\textsuperscript{232} Wielka nieobecna [The Great Absent], p. 171.
\textsuperscript{233} Wielka nieobecna [The Great Absent], p. 172.
\textsuperscript{234} Wielka nieobecna [The Great Absent], p. 207.
\textsuperscript{235} Ordinance of the Minister of National Education of 12 August 1999 on school teaching methods and the scope of education concerning human sex life, the principles of conscious and responsible parenthood, the value of family, prenatal life and methods for and means of conscious reproduction contained in the core curriculum of general education (Rozporządzenie ministra edukacji narodowej z dnia 12 sierpnia 1999 r. w sprawie sposobu nauczania szkolnego oraz zakresu treści dotyczących wiedzy o życiu seksualnym człowieka, o zasadach świadomego i odpowiedzialnego rodzicielstwa, o wartości rodziny, życia w fazie prenatalnej oraz metodach i środkach świadomej prokreacji zawartych w podstawie programowej kształcenia ogólnego) (Journal of Laws No. 67, item 756, as amended).
\textsuperscript{236} Wielka nieobecna [The Great Absent], p. 239.
Homosexual orientation is commonly associated with sexually transmitted diseases, pedophilia, sadism and masochism. The content refers also to such phenomena, unknown in the contemporary academic literature, as: “apparent homosexuality” or “homosexual fear”.

“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 are their rights 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 the belief in them 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”.

Research conducted by KPH indicates that textbooks treating homosexuality as pathology, departure from socially accepted norms or even sexual deviation, are still being used also at the level of higher education institutions. Despite numerous appeals to the Minister of Science and Higher Education (MNiSW) to take measures in that respect, the ministry has remained inactive, justifying its stand with the principle of school autonomy as regards the content taught, scientific research and artistic freedom, as well as complete independence in developing school curriculum. Given the above, the MNiSW does not either recommend using specific textbooks in the didactic process.

The MNiSW backs its position with an argument that every school develops its own study plan and curriculum in line with their autonomy and in compliance with educational standards for individual fields of study. The prevailing educational standards regulate ca. 40% of the content taught, allowing councils of individual organizational units to introduce specific material to the curricula pursuant to the Act on higher education. Therefore the decision to bring in educational content concerning homosexual persons in the society as well as discrimination and intolerance towards them, is left to the discretion of councils of particular organizational units at a higher education institution. Information on counseling and data regarding organizations and specialists able to provide adequate protection or support is not provided at any level of education.

The proposed recommendation to the National Action Plan for Equal Treatment contains an
objective of providing psychological support to LGBT children and young people, as well as to their families, including psychological service in small towns and villages (the extended version of the Plan envisions also online psychological service). The relevant plan would be developed within a year, whereas its implementation by the PRT would be scheduled for the following year.

There are cases in which actions are taken to counteract the present situation (cases no. 128, 129).

The curriculum of the Introduction to Family Planning features the following points related to the issues of human gender identity:

- Formation and acceptance of gender identity. Options of help in overcoming problems related to gender identity,
- Problems with achieving gender identity, options of help.

The curriculum does not define the “options of help”, 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 birth gender. Among the points to be discussed there are also “problems in achieving gender identity” – a concept which puts persons not having or changing their gender identity in a worse position of somebody requiring help.

The Introduction to Family Planning also raises concerns in relation to the absence, except for gender identity, of any references to transgender issues whatsoever. The subject does not mention gender diversity and expression, transsexuality, transvestitism and transgenderism.

32.4 Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?

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. The experience of the Trans-fuzja Foundation shows that it is possible to change data on the attendance list, but most often only if students are supported by their parents. Without parental consent, transgender persons have no possibility to change their personal data in school documents.

In line with the recommendations of PRT and MEN, the reviewers approving textbooks to be used in schools should pay particular attention to the textbook content in terms of equal treatment and combating discrimination on grounds of gender, race, ethnic origin, nationality, religion or belief,
political views, age, sexual orientation, marital and family status.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

33.1 Do the design of national health plans, health surveys, suicide prevention programs, medical training programs, training courses and materials, the monitoring and quality assessment of health-care services, take into account specific health service needs in relation to sexual orientation and gender identity?

The information gathered by NGOs indicate that in none of the listed areas the authorities take into account specific needs of LGBT persons as regards health care services.

The National Health Program 2007-2015\(^{242}\) adopted in 2007 by the Council of Ministers utterly neglects the issue of LGBT patients. Also reports on the health of the Polish society published annually by public institutions, such as “Health of the Polish Society”\(^{243}\) (“Stan zdrowia ludności Polski”) issued by the Central Statistical Office (GUS) and “Health Situation of the Polish Society”\(^{244}\) (“Sytuacja zdrowotna ludności Polski”) issued by the National Institute of Public Health – National Institute of Hygiene, do not refer to health care for LGBT persons. The joint publication of WHO, MON, the Ombudsman for Children (RPD) and the Polish Suicidological Society concerning suicide prevention merely mentions “other” sexual orientation among the risk factors and does not propose any specific preventive measures addressed directly to LGBT persons. Neither the


\(^{244}\) See [http://www.prawapacjenta.eu/var/media/File/streszczenie_raportu_pzh_dla Portalu.pdf]

\(^{245}\) See [http://www.brpd.gov.pl/publikacjekskany/Przeciwzdzialanie_poradnik_2.pdf]
reports nor controls made by the Ombudsman of Patient Rights (RPP), being the central organ of State administration for protection of patients’ rights, indicate that this problem is of interest to that authority.

Only the research on mental health status of LGBT persons, carried out under the KPH project Friendly Gynecologist246, involved lesbians. It showed that the level of psychological well-being of lesbian and bisexual women is much lower than in the case of heterosexual women. 8.7% of non-heterosexual women reveal self-harm tendencies due to non-acceptance of their sexuality and 9.1% due to non-acceptance of their sexuality by the society. A report on the situation of LGBT persons in Poland in 2005-2006247 shows that about 25% of LGB persons who revealed their sexual orientation to a medical professional were treated in a discriminatory manner.

The Trans-fuzja Foundation recorded cases of refusing to sell hormone medicines to persons undergoing a gender correction procedure in relation to the personal identification number (PESEL) provided on the prescription. A case was reported to the Foundation of a transgender woman who was refused to be sold female hormone drugs due to having a male PESEL number. Moreover, the Foundation recorded also problems of transgender persons with buying refundable medicines associated with gender-specific conditions. One of the reports concerned an attempt to refuse to sell a prescribed medicine recommended for gynecological problems to a transgender man after the correction of the legal gender. The pharmacy employee justified her refusal with a male PESEL number on the prescription and the customer’s gender expression.

### 33.2 Do training programs for health professionals make them aware of the need to deliver the highest attainable standard of health care to all persons, regardless of their sexual orientation and gender identity?

According to the information gathered by NGOs, such training programs merely mention LGB issues and in their present form do not ensure the required level of awareness among health professionals.

Lack of relevant solutions is to some extent driven by a parallel lack of specific legislation which would directly guarantee respecting the rights of homosexual and bisexual patients. Despite the fact that the Constitution of Poland guarantees in Art. 68 the right to protection of health and equal access to health care financed with public funds, AoET prohibits discrimination in access to health care (public and private alike) only on grounds of race, ethnicity and nationality (Art. 7 AoET). This means that sexual orientation has not been covered by the anti-discrimination laws.

There are still too few examples of specific training programs which would provide knowledge and

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skills contributing to an effective implementation of that aspect of the recommendation. It should be underlined that the health care training system still uses courses which reinforce the stereotypical approach to homosexuality and bisexuality, and thus strengthen discrimination against LGBT patients.

In May 2012, KPH intervened against homophobic content present in training courses for nurses and midwives. The regulation of the MZ of 29 October 2003 on specialization, qualifying courses and framework programs for nurses and midwives lists homosexuality among “selected issues of sexual deviations and pathology”, next to such terms as exhibitionism, sadism, masochism, group sex, rape, prostitution. The regulation served as a basis for the training program for nurses and midwives as regards preparation of a family for the procreation function. The program mentions “adolescent homosexuality” among the selected aspects of sexual education of young people, whereas in the “Aspects of selected sexual orientations and pathologies” homosexuality and bisexuality are discussed along with e.g. sadism, masochism, pedophilia, child sexual abuse and incestuous relationships. The acquisition of that knowledge is next tested during exams by means of such homophobic questions as: ”Homosexuals who seek treatment, most often: A. do not feel different from other men; B. do not concern their behavior abnormal; C. do not accept their sexual inclinations; D. enjoy good position in the society” (question no. 98, autumn session 2011) or ”Some homosexuals are especially dangerous in social terms as they seduce: A. persons with incorrect sex drive; B. persons practicing prostitution; C. mature persons; D. adolescents” (question no. 88, spring session 2011). After the intervention of KPH and publicizing the case in the media, the Centre asked KPH to engage in the actions aimed at eliminating homophobic content and adjusting the training programs to the current standards of teaching about the LGBT issues. Currently a new schooling program is being developed. The prejudiced content is being removed from the exams and curriculums.

The problem of respectful treatment of LGB patients is visible e.g. in blood donation centers in the case of donating blood by persons who declared their homosexual or bisexual orientation. Although the regulations which would disqualify LGB persons as blood donors have been eliminated at the systemic level, some blood donation centers still uphold a belief that LGB donors carry HIV much more often than heterosexual donors (e.g. Wojskowe Centrum Krwiodawstwa i Krwiolecznictwa – Military Blood Donation and Haemotherapy Centre).

33.3 Are education, prevention, care and treatment programs and services in the area of sexual and reproductive health available to LGBT persons, and do they respect their needs?

248 Ordinance of the Minister of Health of 29 October 2003 on the list of areas of nursing and of healthcare areas where specialization and qualification courses may be organized as well as on framework specialization programs for nurses and midwives [Rozporządzenie Ministra zdrowia z dnia 29 października 2003 r. w sprawie wykazu dziedzin pielęgniarstwa oraz dziedzin mających zastosowanie w ochronie zdrowia, w których może być prowadzona specjalizacja i kursy kwalifikacyjne, oraz ramowych programów specjalizacji dla pielęgniarek i położnych] (Journal of Laws No. 197, item 1922).

NGOs have no record of that type of programs or services addressed directly to LGB persons. Such persons have a very limited access to programs offered by health care as the health care system neither perceives nor meets the needs of that group. The LGB persons avail most often of private health care services, if they are available. Information concerning “friendly places” is passed on informally or on online forums.

33.4 Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?

NGOs have no record of such activity on the part of health professionals or social workers.

The Ministry of Labor does not take such actions, since it recognizes that “social workers, by gaining education, acquire various skills that enable them to provide adequate help for [all] individuals and families.”

33.5 Are patients in hospitals or other persons subject to medical emergency treatments, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of sexual orientation or gender identity?

A patient can freely identify their “next of kin”. However, if a patient is unconscious, most often their partner is deprived of the “next of kin” status, which means that he or she cannot be present when medical treatment is provided, cannot inquire about health condition of his/her partner, has no access to medical documentation and cannot take decisions concerning further treatment of his/her partner. As there is no central register of “next of kin” persons, such a person needs to be appointed wherever the partner is treated.

The AoPR defines “next of kin” as follows: spouse, blood relative or relative up to 2nd degree of lineal kinship, statutory representative, person living in cohabitation or person appointed by the patient. Thus, if the patient is conscious, they can freely indicate their partner. This is conducted in a formal manner by making an appropriate statement. The procedure is problematic as different health care centers require different documents, which can be difficult in the case of emergency medical intervention. If the patient is unconscious and unable to indicate the next of kin, then their partner usually loses that status as in most cases they are not considered a cohabitant.

The same principles apply to a partner of a pregnant woman who can be present during the

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delivery as a next of kin appointed by the patient. Pursuant to AoPR, also medical documentation can be made available to the partner only after the patient gives their authorization.

The Ombudsman of Patient Rights does not seem to regard that issue as a problem as no complaints have been received in that respect. The MZ believes that the problem is not the very wording of the provisions concerning the next-of-kin person but their practical application.

Propositions for the recommendation to the National Action Plan for Equal Treatment contain also an objective consisting in facilitating the access of persons living in same-sex relationship to information about the health of their partner. The Plan is to be delivered within 2 years with the help of relevant legislative changes coordinated by PRT.

There are no appropriate measures guaranteeing specific health care to transgender persons.

The problem with such a regulation of health care services consists in depriving the transgender persons after gender correction of an easy access to State health care centers. The Trans-fuzja Foundation recorded cases of transgender men unable to receive professional gynecological help from a medical professional employed in public health care, due to the changes in the legal status (refusal to make an appointment on grounds of personal data and gender expression) and ignorance of a doctor (inability to provide help to a patient stated during the appointment due to gender correction).

What seems interesting, the regulation of the MZ on guaranteed medical benefits does not take a specific note of the patient’s gender with respect to the services provided.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organization.

34.1 Has homosexuality been removed from the national classification of diseases?

Yes, homosexuality has been removed from the national classification of diseases. The ICD-10 of the World Health Organization, which has been the official classification of diseases in Poland since 1996, does not consider homosexual orientation to be a disease or health disorder.

34.2 Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?

Para. 2(6) of the Appendix to the Ordinance of the Minister of Health of 23 September 2010 on standards and medical procedures for the provision healthcare services concerning the care of women during physiological pregnancy, physiological labor, puerperium and the care of newborns [Rozporządzenie ministra zdrowia z dnia 23 września 2010 w sprawie standardów postępowania oraz procedur medycznych przy udzielaniu świadczeń zdrowotnych z zakresu opieki okołoporodowej sprawowanej nad kobietą w okresie fizjologicznej ciąży, fizjologicznego porodu, połogu oraz opieki nad noworodkiem] (Journal of Laws No. 187, item 1259).
In Poland there are still normative acts, training programs for health professionals and medical textbooks in which homosexuality is called an illness or a disorder.

In May 2012, KPH intervened against homophobic content present in training courses for nurses and midwives. The regulation of the MZ of 29 October 2003 on specialization, qualifying courses and framework programs for nurses and midwives lists homosexuality among “selected issues of sexual deviations and pathology”, next to such terms as exhibitionism, sadism, masochism, group sex, rape, prostitution. The regulation served as a basis for the counseling program for nurses and midwives as regards preparation of a family to the procreation function. The program mentions “adolescent homosexuality” among the selected aspects of sexual education of young people, whereas in the “Aspects of selected sexual orientations and pathologies” homosexuality and bisexuality are discussed along with e.g. sadism, masochism, pedophilia, child sexual abuse and incestuous relationships. The acquisition of that knowledge is next tested during exams by means of such homophobic questions as: “Homosexuals who seek treatment, most often: A. do not feel different from other men; B. do not concern their behavior abnormal; C. do not accept their sexual inclinations; D. enjoy good position in the society” (question no. 98, autumn session 2011) or “Some homosexuals are especially dangerous in social terms as they seduce: A. persons with incorrect sex drive; B. persons practicing prostitution; C. mature persons; D. adolescents” (question no. 88, spring session 2011). After the intervention of KPH and publicizing the case in the media, the Centre asked KPH to engage in the actions aimed at eliminating homophobic content and adjusting the training programs to the current standards of teaching about the LGBT issues. (Case no. 72) Currently a new schooling program is being developed. The prejudiced content has been removed from the exams and curriculums.

Despite a change in the law, some blood donation units still provide out-of-date information that homosexual or bisexual orientation prevents from blood donation (on the website of the Military Blood Donation and Chemotherapy Centre).

In 2010, KPH analyzed the image of homosexuality and bisexuality in Polish academic textbooks. The results showed that books are still used which present homosexuality as a “worse” form of sexuality, resulting from disruption of a “natural” process leading to heterosexuality.

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253 Ordinance of the Minister of Health of 29 October 2003 on the list of areas of nursing and of healthcare areas where specialization and qualification courses may be organized as well as on framework specialization programs for nurses and midwives (Journal of Laws No. 197, Item 1922).

254 See http://www.wckik.pl/poradnik.php#TOP.

34.3 Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?

NGOs are not aware of any measures taken by the Government to prevent such actions. There were cases of attempts to convince a homosexual person to undergo psychological tests to "prove" sexual orientation (case no. 73). NGOs are not familiar with State entities that carry out reparative therapy. However, NGOs are neither aware of any measures taken by the State to prevent reparative therapy.

A catholic Foundation 'Light Life' is operating in Poland according to the Law on Foundations. They run a 'Courage' center in Lublin which carries out gay and lesbian reparative therapy. In 2006 the Foundation has been granted a 'Public Benefit Organization' status which entitles them to once a year collect 1% of personal income tax of citizens willing to contribute.

The status has been granted by the Ministry of Labor based on their statutory provision that they 'provide aid to persons in difficult social situation'.

35. Member states should take suitable measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person shall be subjected to sex reassignment procedure without their consent.

35.1 Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?

No regulations guarantee effective access to appropriate medical services to transgender persons. Most medical surveys and diagnostic testing takes place in the private sector.

Information about medical specialists is distributed via channels created by transgender persons for transgender persons. Experience is exchanged on online forums, in meeting groups and by other forms of communication - there are no public lists of medical centers specializing in gender reassignment.

Neither are there standardized requirements of transgender diagnostic testing. Transgender persons wishing to have their gender corrected consult a sex therapist-psychologist who, in most cases, becomes a doctor supervising the gender reassignment process. The medical documentation (necessary for the purposes of the court analysis) includes the notes taken during the psychological interview, psychiatric opinion and all types of physiological tests (most often head X-ray, cerotype
determination and assessment of gonads condition). Such an approach to gender reassignment places transgenderism and transsexuality in particular, in the position of a disease or a disorder - a phenomenon which can be diagnosed. The emphasis is put not on facilitating a change of a person's gender data but on controlling their options by means of court authorities.

35.2 If in the past it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?

It is not certain whether the conversion therapy has been abandoned.

As there are no legal regulations at the national level concerning gender reassignment, it cannot be stated whether conversion therapy has been abandoned in Poland. A website for persons wishing to correct their birth gender, transseksualizm.pl, has published the so-called black list of doctors, including also psychologists attempting to convince patients that their claims to gender reassignment are groundless. Persons having contact with the Trans-fuzja Foundation inform also that a practice of denying gender identity of a transgender person more often concerns children and adolescents than adults.

35.3 Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?

There are no measures explicitly prohibiting such practices.

Art. 156(1) CrC prohibits, under the penalty of imprisonment from 1 year to 10 years, sterilization, which applies also to the reassignment of birth gender as such. Despite that provision, though cases have been reported of the so-called normalizing surgery conducted on newborn babies. However, such cases are known only from the accounts of persons contacting NGOs.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

36.1 Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?

36.2 If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?

No regulations guarantee covering the costs of gender reassignment.
Surgical procedures or treatment related to gender reassignment were deleted from the list of refundable medical procedures in 1999, hence the costs of all physical treatments are covered by the patients. The Voivodeship Administrative Court (WSA) ruled (VI SA/Wa 1331/11) that lack of refundable services related to gender reassignment is unlawful (case no. 130). The Polish State does not support transgender persons in their efforts to have their gender reassigned, yet in many cases it requires a chest reconstruction surgery (in the case of transgender men), which places transgender persons in an unequal position in relation to the non-transgender population.

VIII. Housing

37. Measures should be taken to provide all persons with equal and effective access to appropriate accommodation, without discrimination based on sexual orientation or gender identity; measures must be specifically designed to protect against discriminatory evictions and to ensure equal rights to acquire and retain ownership of real estate and other property.

37.1 Was legislation adopted prohibiting discrimination in areas such as a) the sale and rental of properties, b) granting loans for the purchase of real estate; c) recognition of the tenant rights of a partner in communal flats d) eviction because of sexual orientation and gender identity?

Poland does not have legislation that explicitly prohibits discrimination based on sexual orientation in such areas. Among the causes of discrimination in access and conditions for use of social security and services, including housing services, AoET shows only gender, race, ethnicity and nationality (art. 6 of AoET). In principle, the general rules concerning the sale, rental or credit-funding of real estate, as well as recognition of tenancy rights and eviction do not lead to direct discrimination against LGBT persons. It should be noted, however, that the practice of the courts, in particular with regard to recognition of the deceased partner's tenancy rights, so far has repeatedly led to de facto discrimination against LGBT persons (case No. 74).

The general regulatory framework for housing is based on the Constitution, the Law on the Protection of the rights of tenants (UoOPL) and the CC.

Under Polish law, even persons who are not related may be co-borrowers and co-owners of the property. This means that the partners, forming a same-sex relationship, who by law are treated as strangers, are also entitled to a joint purchase, sale, and to take a joint loan. KPH experience shows, however, that such persons can sometimes meet with refusal of credit, which is not always possible to explain only by not meeting the financial requirements. Such a refusal is sometimes a consequence of a "pro-marriage" interpretation of the provisions included in the regulations and

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general conditions of the loan in force at the given bank.

37.2 Are there measures to ensure access to shelter and accommodation in an emergency without discrimination based on sexual orientation and gender identity?

Issues of shelter and accommodation in emergency situations are governed by Polish law in the UOPs. However, they do not include any regulations that could make direct reference to LGBT persons. Only art. 119. Section 2 item 3 of UOPs indirectly indicates that the social worker in the performance of their tasks should counteract practices which are inhumane and discriminatory of person, family or group. Mainly entities included in the various levels of local government, assisted by the Ministry of Labor are entrusted with the implementation of the tasks of social welfare. It includes, among others, running homeless shelters, temporary residence houses, long-term residence homes and transitional housing.

Information available to LGBT organizations, however, shows that, so far, no projects which were or are have been pursued by these entities, both at the local level (e.g. the "Standards for shelters helping the homeless or threatened with homelessness," prepared by the Council of Welfare for homeless persons to the President of Warsaw) and nationwide (e.g., a joint project of MLSP and organizations dealing with social welfare and homelessness, "Communal standard of fighting homelessness"), do not include any action or recommendation in relation to helping LGBT persons. There is no information on the situation of LGBT persons in the institutions of social welfare.

Completed research on this subject does not distinguish this category of persons. Ministry of Labor points out, however, that so far it has not happened that a homeless person did not receive help because of their sexual orientation.

It should also be noted, that sometimes the tasks of the State in the area of homelessness are implemented through voluntary organizations that are religious in nature. Due to the high stigmatization of gays and lesbians, often LGBT persons who reside in such facilities, decide to hide their sexual orientation, giving the impression that the problem of stay for LGBT persons in the institutions that help persons in difficult situation is completely invisible.

37.3 Is information available to owners and landlords serve to combat discrimination?

The data held by LGBT organizations show that in general this type of information is not made

257 J. Szolajiska, Standardy usług dla osób bezdomnych w warszawskich placówkach opieki stacjonarnej i półstacjonarnej oraz kryteria różnicujące te usługi [Standards for services provided to homeless persons at Warsaw establishments of full or partial in-patient care and service differentiation criteria] Warsaw 2008.; Julia Wygnańska, Raport o polityce społecznej wobec bezdomności w Polsce [Report on social policy for homelessness in Poland], Warsaw 2006.

258 Letter of the Minister of Labor and Social Policy of 3 April 2012.
available to owners or tenants of the flats. Activities in this field are not taken, among others, due to lack of statutory obligations in this regard.

Are there effective and proportionate legal or non-legal compensation opportunities for the victims of such discrimination?

Victims of discrimination can only benefit from the general regulations that lead to compensation for damage or injury caused by discrimination. LGBT persons may initiate a civil action for claiming damages and compensation. They can also submit a complaint to the RPO. These measures are not always successful (the burden of proof rests on the victim).

37.4 Are there campaigns directed towards housing agencies to raise awareness of the standards?

So far, there has not been any public awareness campaign in this regard. These issues are not dealt with in any way by the Equality Bodies.

38. Particular attention should be directed to the risk of homelessness affecting lesbians, gays, bisexuals and transgender persons, including young persons and children who are particularly vulnerable to social exclusion, including from their own families; therefore, the relevant benefits should be secured without discrimination on the basis of objective assessment of the needs of each person.

38.1 Are there programs, including support programs to respond to the specific risk of homelessness among LGBT persons, especially youth and children? Do these programs involve the use of neighborhood cooperation programs, e.g. for safety?

To date, such programs, have not been established. The information held by non-governmental organizations shows that so far the problem of homelessness of LGBT persons is generally not recognized. Research conducted by the State does not include such a category of the homeless or threatened with homelessness, which reflects a complete lack of any actions or recommendations aimed at combating this phenomenon.

38.2 Did the relevant agencies carry out awareness training among their employees on young LGBT persons facing homelessness?

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259 J. Szołajska, Standardy usług dla osób bezdomnych w warszawskich placówkach opieki stacjonarnej i półstacjonarnej oraz kryteria różnicujące te usługi [Standards for services provided to homeless persons at Warsaw establishments of full or partial in-patient care and service differentiation criteria] Warsaw 2008.; Julia Wygnańska, Raport o polityce społecznej wobec bezdomności w Polsce [Report on social policy for homelessness in Poland], Warsaw 2006.
So far, the institutions dealing with social welfare have not conducted trainings that would include such topics. Ministry of Labor does not take such action, since it recognizes that "social workers, as they gain their education, they acquire different skills that enable them to provide adequate help for [all] individuals and families." The observation of non-governmental organizations shows, however, that social workers are not prepared to effectively assist LGBT persons at risk of homelessness.

IX. Sport

39. Homophobia, transphobia and discrimination based on sexual orientation and gender identity in sport, are, like racism and other forms of discrimination in sport unacceptable and should be fought.

40. Access to sport and sports facilities should be open to all, without discrimination based on sexual orientation or gender identity; in particular, effective measures should be adopted to prevent, fight and prosecute discriminatory abuse referring to sexual orientation or gender identity during and in relation to sporting events.

40.1 Have any measures been taken to prevent exclusion from participation in sport because of sexual orientation and gender identity?

40.2 Encouraging through examples of action:

a) creation and dissemination of standards of behavior regarding issues of sexual orientation and gender identity in clubs and sports organizations;

b) the establishment of cooperation between organizations representing LGBT persons and sports clubs;

c) anti-discrimination campaigns in sport; d) support for sports clubs set up by LGBT persons?

So far, no effective action has been taken in any of these areas. Homophobia in sports is still not regarded as a serious problem that requires commitment from the authorities. Transphobia is discussed as belonging somehow to a topic of homophobia - it does not exist as a separate category.

The two most important public institutions in the field of sport in Poland, the Ministry of Sport and Tourism (MSIT) and the Polish Football Association (PZPN), have not shown any activity in the area of discrimination against LGBT persons in sport. Both institutions only declare their desire for greater involvement in this area, but it does not translate into real action. The Ministry explains

260 Letter of the Minister of Labor and Social Policy of 3 April 2012.
their previous inactivity with the fact that so far they have not received a single complaint about discrimination based on sexual orientation or gender identity. Also due to the fact that the Ministry was not invited to establish cooperation in this field, it did not feel obliged to take its own initiative.261 Before the start of Euro 2012, the spokesman of Polish PZPN said that although the Polish PZPN is against discrimination, the association had not taken any definite action before in this direction.262

Equality policy carried out by MSIT and the PZPN is mainly based on the programs prepared for EURO 2012 in cooperation with UEFA. The observations of LGBT organizations show that in the field of anti-discriminatory activity it is not extensive. The only action which can contribute to combating discrimination against LGBT persons is to participate in the RESPECT campaign, pursued for years by UEFA, which also includes the development of respect toward sexual minorities. During EURO integration zones that were open to all regardless of ethnicity and nationality, gender, disability and sexual orientation were formed in buildings and public places. One of these areas was launched in the office of the PRT.

So far the Ministry of Sport has taken no action to create or disseminate standards related to LGBT persons. The only social campaigns against homophobia in sport were: "Known Player: I'm gay. Fans applauding," prepared by KPH, citizens’ initiative "Rainbow Tribune in 2012", seeking the safety of LGBT persons in the stands during the Euro 2012 by encouraging discussion of the need to isolate specific sectors of the stadiums only for LGBT persons, and "Etnoliga", a project to combat racism, sexism and homophobia in football, in which women’s LGBT team “Chrząszczyki” [Beetles] also participated.

State institutions were not involved in organizing any of these initiatives. Although the Minister of Sport announced the participation in the international debate "Can sport teach tolerance? How to prevent homophobia, sexism and xenophobia in sport ", organized by the KPH and Gazeta Wyborcza, the Minister ultimately cancelled her presence. This event was the largest such initiative devoted to the issue of homophobia in sport, which was attended by several prominent athletes, politicians and the PRT. The Ministry is not involved in the promotion of the formation of sports clubs by LGBT persons. According to the MSIT, this possibility is no limited in any way and therefore "is not wise for the MSIT to identify persons organizing sport competition through their sexual orientation or gender identity." In addition it should be noted that homophobia in sports is extremely strong. So far in Poland, there was no coming out of any professional athlete. This situation confirms the outcome of the survey conducted on LGBT portal innastrona.pl, in which 60% of participants said that coming out of a well-known athletes would possibly help combat homophobia in sports, but would ruin their career (33% thought that it would help combat homophobia, while 6% considered that it will not change anything. Maciej Szczesny, the Polish

261 Letter of the Minister of Sport and Tourism of 29 September 2011.
262 Letter of the Minister of Sport and Tourism of 4 April 2012.
goalkeeper, coach and sports commentator to the question asked on 28 May 2012 at the conference "Can sport teach tolerance ...": "And what would you advise your player, who you coach, and you find out he is gay? " answered" ... “I would say to him that there is no chance to appear in the [sports] environment, even if you shook hands with Szczesny, Pacewicz, Tusk, Komorowski and Biedron. If you really care about playing ball, keep your mouth shut. There is no way the environment will accept you.”

40.3 Were effective measures adopted to prevent, combat and punish the use of discriminatory insults in connection with sports events?

40.4 In particular: a) were the homophobic and transphobic remarks related to sporting events recognized as a crime? b) whether the relevant provisions of the European Convention on Spectator Violence and Misbehavior at Sports Events, European Sports Charter and Recommendation No. 12 concerning ECRI's general policy were realized with respect to sexual orientation and gender identity?

No effective measures have been taken to prevent, fight and punish the use of discriminatory insults in sport, in particular in relation to football events, during which most often comes to this type of events. Homo/transphobic hate speech is not an offense under Polish criminal law. Appropriate international instruments, still have not found application in relation to sexual orientation or gender identity.

In the absence of provisions criminalizing hate speech in Polish criminal law, victims of homophobic content of the stadium shouts and banners are forced to use general rules of criminal law (crime of insult or defamation) or civil law (action for infringement of personal interests), which exclude the prosecution of such offenses ex officio and require the victim to provide relevant evidence for the existence of an offense or unlawful act.

Due to the fact that many Polish stadiums still lack the monitoring system, (in places with monitoring it is difficult to identify individuals, because of the hoods worn by the fans) the opportunity to prove homophobic behavior is significantly impeded, even in situations where the police have adequate monitoring, it is not always used (case No. 131). Besides, the prosecution very often discontinues the cases in which it is impossible to determine the specific addressee of homophobic message, for example, when a banner contains an insult directed to homosexual persons in general. Authorities also do not take action to effectively implement the recommendations from the instruments of international law relating to discrimination in sport.

The Law on safety of mass events (UoBiM), which was intended to regulate the security during

264 Letter of the Minister of Sport and Tourism of 4 April 2012.
sporting events in a comprehensive manner, does not contain guarantees against discriminatory insults. Polish PZPN adopted two legislative acts relating to the issue of discriminatory insults. The first is the Disciplinary Regulations, which in art. 67 provides for sanctions for, among others, presenting discriminatory content, for shouting or committing any other act of this nature at the time immediately before or after the match. The second is Resolution XV/372 of 2009 on detailed rules for the display of banners, flags, or other similar objects on the football competition, providing for the punishment for presentation inscriptions, symbols or figures of speech expressing intolerance. The observation of non-governmental organizations show that so far it has not applied to discrimination against LGBT persons (case No. 132). This opinion is also confirmed by long-time players. On 28 May 2012 Maciej Szczęsny said at the conference "Can sport can teach tolerance ...?" that "... we can talk about kicking racism out of the stadiums for a long time unless the owners of stadiums and the police start to severely treat the symptoms of homophobia or racism. You have to put a stop to it where the law puts limits. Meanwhile, homophobic and racist banners are hanging today and no one actually minds. May I first ask MP Kalisz, whether the politicians will finally require football activists and the police to obey the law?"

40.5 Were any appropriate measures taken to a) end to discrimination of transgender persons in sport and sports competitions; b) remove obstacles that transgender persons face by taking part in sport (the question of access to the dressing room), c) recognize the preferred gender of transgender persons?

No such action was taken.

41. Member States should encourage sports associations and fan clubs and encourage dialogue with them in the activities aimed at raising awareness of discrimination against lesbian, gay, bisexual and transgender persons in sport and on condemning manifestations of intolerance towards such individuals.

41.1 Have any measures been taken to support sport associations and football fans clubs in initiatives designed to raise awareness of discrimination against lesbian, gay, bisexual and transgender persons in sport and the condemnation of intolerance towards such individuals?

The observations of LGBT organizations show that so far authorities have not taken such action. Very often this is due to fear of reaction from the football fans.

It is worth noting that the information contained on the Polish Football Association show that the Polish PZPN prepared a draft Notification on relations between football clubs and football fan associations and fan organizations. In accordance with paragraph 2 of the Notification "Clubs must

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Resolution No. IV/87 of 19 April 2012 of the Management Board of the Polish Football Association adopting the Disciplinary Regulations of the Polish Football Association (Uchwała nr IV/87 z dnia 19 kwietnia 2012 r. Zarządu Polskiego Związku Piłki Nożnej w sprawie przyjęcia Regulaminu Dyscyplinarnego PZPN).
require associations to put more emphasis on the good behavior of its members and to exclude those involved in any form of hooliganism or anti-social behavior." LGBT organizations have no information whether the Notification was received and whether attempts were made to enforce it.

X. Right to asylum

42. In cases where Member States have international obligations in this respect, they should recognize that well-founded fear of persecution on grounds of sexual orientation or gender identity may be a sufficient reason for granting refugee status and asylum, in accordance with national law.

42.1 May a legitimate fear of persecution on grounds of sexual orientation or gender identity be a sufficient reason for granting refugee status and asylum?

Under Polish law, a legitimate fear of persecution based on sexual orientation or gender identity, may constitute sufficient reason to grant legal protection on the Polish territory. In practice, however, much controversy is raised by the interpretation of the immigration services of term "reasonable risk" of prosecution, which very often leads to refusal and expulsion of a foreigner.

Rules governing the award of legal protection to foreigners on Polish territory are contained in article 57 of the RP Constitution, providing for the right to asylum and refugee status, and in the Act on granting protection to foreigners (AoGPA).

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.

In accordance with article 14 section 2 of AoGPA, a particular social group might constitute a group whose members share a common sexual orientation, but sexual orientation cannot cover acts that are crimes under Polish law. In addition to such protection, the law provides for the possibility of granting subsidiary protection (art 15 ofAoGPA), protection 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), tolerated stay (art. 97 of AoGPA) and asylum (art. 90 of AoGPA).

In the past 5 years, out of 42 573 applications of persons applying for refugee status 17 of them were motivated by fear of persecution based on sexual orientation or gender identity. In 2011, the authorities granted only two transsexual persons a refugee status. During this period there was

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268 Letter of the Minister of Interior of 30 April 2012.
one positive decision, which would apply to a homosexual person – only in August 2012 a gay man from Uganda has been granted refugee status. Other case of a gay Ugandan man is waiting to be heard by an administrative court. So far the court has withheld deportation procedure.

In practice, several issues relating to LGBT refugees recognized by the Office for Foreigners (UDSC) and Council for Refugees (RDUU), as the body of second instance, led to controversial decisions to refuse refugee status due to the recognition that the condition of legitimate fear was not fulfilled (case No. 74, 75).

42.2 Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?

Officials dealing with such requests so far have not been trained in the specific problems of LGBT persons applying for refugee status or asylum.

Due to the insignificant amount of cases concerning LGBT persons, MSW which is responsible for providing protection to foreigners, has so far not carried out a separate training related to the topic for UDSC employees.

Despite assurances by the Interior Ministry UDSC, the training on interrogation techniques concerning status includes drawing attention to the possibility of the presence stereotypes and prejudices among the employees against persons of non-normative sexual orientation or gender identity, LGBT organizations have no information about the specific manner in which these courses would include LGBT topics and allow for effective protection of LGBT applicants. After examining numerous cases, LGBT organizations are of the opinion that recognizing the specific situation of an LGBT person is an exception in the course of action of authorities hearing requests for refugee status. However, it should be noted that RDSU, when issuing decisions saw the need to provide the two Belarusians seeking refugee status with guarantee of protection of their family life due to the fact that they remain in a relationship. " The decision on K.A. should be made in close connection with the partner of the Applicant, so that both individuals in a stable relationship, a fact which should be analyzed as located in the concept of "family life", (...) are granted analogous decision.

42.3 Are requests for asylum because of persecution based on sexual orientation or gender

269 Letter of the Minister of Interior of 19 September 2011.
270 Letter of the Minister of Interior of 30 April 2012.
identity rejected, arguing that asylum seeker can avoid persecution in their home country by hiding their sexual orientation or gender identity?

So far, LGBT organizations did not report the official use of this type of argument by the authorities issuing the decision in that regard.

43. Member States should in particular ensure that 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 sexual orientation or gender identity.

43.1 What are the current procedures guaranteeing the fulfillment of this obligation? Are there documented instances in which asylum seekers have been expelled to such country?

In accordance with article 33, section 4 AoGPA, initiations 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. MSW also assured that for the person who is a subject to proceedings on granting refugee status, a decision on obligation to leave the territory of the Republic or expulsion shall not be issued. However, after the conclusion of the proceedings before the Board of Immigration the final decision becomes enforceable. Contesting the decision to the Voivodeship Administrative Courts needs a separate application for suspension of enforcement of decisions, otherwise it becomes enforceable and deportation procedures begin.

44. Persons seeking asylum should be protected from discriminatory policies and practices because of their sexual orientation or gender identity, in particular, appropriate measures should be 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.

44.1 What actions were taken to meet this requirement?

44.2 Have the staff in the centers of immigration, police, medical personnel and NGOs working with immigration centers received the necessary training and information on issues related to sexual orientation and gender identity?

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272 Letter of the Minister of Interior of 19 September 2011.
273 Letter of the Minister of Interior of 30 April 2012.
The observations of LGBT organizations show that no concrete measures have yet been taken to ensure the implementation of this recommendation. Staff who support foreign asylum seekers have so far not received any special training or information on protection against discrimination for LGBT foreigners, including those residing in refugee centers.

Article 32 of the Constitution contains the principle of equality of all the persons before the law and the treatment by the authority without discrimination in political, social or economic life for any reason. These guarantees theoretically include aliens who apply for asylum or refugee status. So far, there have been no trainings, and no procedures or sets of good practices that would allow the implementation of these principles in relation to foreigners, especially those who remain in refugee centers. Information received from the MSW shows that in the past 2 years the local units of Cooperation Teams [Zespoły Współdziałania] (bodies working in centers for refugees, consisting of center staff, police and psychologists, who are assumed to assist residing aliens) have not take action to prevent violence based on sexual orientation or gender identity.

Moreover, even though UDSC has been participated since March 2008 in implementing the program in identifying, preventing and responding to cases of violence against foreigners residing in the centers for persons applying for refugee status, the information obtained by LGBT organizations shows that this program does not relate to the issues of violence because of sexual orientation and gender identity.

It is also worth noting that in 2011 the Halina Nieć Centre for Legal Aid conducted a series of training courses in 6 centers for aliens applying for refugee status. They related to sexual violence and violence based on gender. Training was addressed to the centre staff and police officers who are members of local Cooperation and they did not include LGBT issues. The information obtained from the MSW showed that they were not mandatory, however, and in fact led to the training of only 12 employees. LGBT organizations do not have the adequate data to assess whether within the cycle of training the issues raised in the context of discrimination against LGBT persons were also discussed.

XI. National human rights structures

45. Member States should ensure that national human rights structures have been clearly mandated to address the issue of discrimination based on sexual orientation or gender identity, in particular, they should be empowered to make recommendations to the laws and policies, raising public awareness, as well as - if national law so provides – examine individual complaints regarding both the private and public sector, and to initiate or participate in legal proceedings.

45.1 Are national human rights structures expressly authorized to address the issue of intolerance based on sexual orientation and gender identity?

274 Letter of the Minister of Interior of 5 October 2011.
275 Letter of the Minister of Interior of 30 April 2012.
The two main bodies that make up the structure of the national human rights protection are RPO and PRT. Both bodies are expressly authorized by law to address discrimination against LGBT persons.

In accordance with Art. 208 of the RP Constitution and art. 1 of the AoRPO, the RPO safeguards the freedoms and rights of persons and citizens specified in the Constitution and other normative acts, including the safeguards the implementation of the principle of equal treatment. The scope of activities covered by the RPO include all discriminatory grounds, including sexual orientation. This is confirmed by indicating the RPO by the Equality Act (including the condition of discrimination based on sexual orientation) as the competent body in matters of violation of the principle of equal treatment (Article 12 of the Act). Both the RPO and NGOs, however, claim that the granting the RPO additional function (the competent body in matters of violation of the principle of equal treatment) occurred without a parallel co-financing of its activities, which raises concern in the context of the ability to effectively carry out this additional task. The PRT was appointed by the Regulation of the Council of Ministers on PRT, which in § 2 includes implementing the government policy of equal treatment in its duties, including anti-discrimination in particular on grounds of sexual orientation, and giving opinions in this respect of draft laws and other government documents.

45.2 In practice, do these structures
a) make recommendations for the laws and policies,
b) raise awareness among the public,
c) deal with individual complaints,
d) are involved in court proceedings,
e) publicly express support for the enforcement of the rights of citizens, such as when freedom of assembly meets with opposition, linked to issues of sexual orientation and gender identity?

National Equality Bodies manifest activity in all these areas. However, due to differently shaped responsibilities and powers, they differ in the action taken and their effectiveness. As demonstrated by past practice of these bodies, in particular PRT, a big impact on their activities in the field of equal treatment of LGBT persons lies in the ideological beliefs and views on issues related to sexual orientation of persons occupying those positions.

To date, RPO formulated a few general statements, which referred to various issues of law and policies related to LGBT persons (case No. 76, 77, 78).

RPO has the authority to receive requests from citizens or their organizations, in connection with public authorities respecting human rights. Within performing the duties of the Equality Body in 2011, the RPO received 1033 cases concerning issues of equal treatment, of which 334 cases
concerning sexual orientation and gender identity. Cases concerning sexual orientation constituted the highest 32.3% level of all cases. The vast majority of complaints to the RPO about dealing with discrimination based on sexual orientation was a result of controversial statements of public figures in the media.276

RPO is also statutorily guaranteed the right to independently conduct the preliminary investigation, to request the initiation of proceedings in civil, criminal and administrative cases, to participate in the already pending litigation (case No. 79), to request information on the status of a matter handled by the courts, as well as the prosecution and other law enforcement agencies and require the judicial and prosecutorial files or other law enforcement institutions files to be available for inspection at the RPO office after the proceedings is completed and the decision made. RPO representatives participated as observers repeatedly during the Parades and Equality Marches in various Polish cities.

RPO has also expressed public support for enforcement of the rights of citizens and expressed concern about the improper activities of the State in this regard. Recently, the RPO drew the government’s attention to the fact that we still lack an independent body to which citizens can file complaints of discrimination by private entities (companies, banks, airlines) for breach of warranty arising from the law of equality. On account of the fact that, according to the RP Constitution, the RPO is only concerned with relations between the individual and the state, the State is not entitled to consider other categories of cases.

In comparison to the RPO, the PRT possesses a more limited range of powers. The body may make recommendations relating to legislation and policies (case No 81). The PRT also participates in conferences devoted to LGBT persons, and also addresses the need for equal treatment of LGBT persons during their public appearances. For example, during the Conference "Gender under control" organized by the for Trans-fuzja Foundation of April 21, 2012, the PRT expressed its support for the draft law on correction of legal gender, and in her statement of 2 June 2012, she supported the initiative of the Equality Parade.

The PRT is not currently equipped with instruments allowing for examining individual complaints, as well as initiating or participating in court proceedings. However, the PRT office takes complaints and requests, and on their basis the PRT then formulates its statements and possibly take interventions (case No. 83). The information obtained from the PRT shows that in the period from 2008 to December 2011, the office received 1092 complaints to PRT including 103 on discrimination based on sexual orientation.

It should be emphasized that the activity of Equality Bodies is also subject to the ideological beliefs of persons occupying those positions. In 2009, the activity of the RPO Janusz Kochanowski met with criticism of LGBT organizations, which accused him of little involvement and lack of

determination in matters of discrimination against LGBT persons. Objections were raised by the failure of the RPO to take action proposed by the organizations, while maintaining a very active and a clear in terms of the outlook (conservative) involvement in other media affairs and political affairs. The controversy also concerned statements of the RPO related to feminists and the lack of solution to number of cases that occurred during the RPO meeting with LGBT organizations.

The first term of PRT Elżbieta Radziszewska was also severely negatively evaluated by the environment of LGBT organizations. Charges include a refusal to participate in a meeting organized by an NGO, which was attended by the Swedish PRT, Katri Linna, lack of initiative to ask the European Commission for funding of anti-discrimination actions under the PROGRESS program for 2010 (the government had been using these funds every year, even in the pre-accession period, during Radziszewska’s term of office for the first time Poland did not apply for founding), lack of activities involving the distribution of the publication ordered and financed by the government "Marked, sexual minorities in Poland. Report for 2008, edited by Ireneusz Krzeminski," and numerous homophobic statements as well as the presence in the Catholic media, that openly discriminate against LGBT persons. In 2010, the attitude of PRT led to a situation in which all the organizations representing the interests of LGBT persons refused any meetings and cooperation with the PRT until her dismissal.

In addition it may be emphasized that the cooperation of LGBT organizations with current RPO Irena Lipowicz and PRT Agnieszka Kozłowska-Rajewicz is going much better. Both bodies are much more open to cooperation and expressed their support for LGBT issues on many occasions.

XII. Discrimination based on multiple grounds

46. Member States are encouraged to adopt measures to ensure that national legislation prohibiting or preventing discrimination, also protects against discrimination based on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should be equipped with powers broad enough to have the opportunity to raise such issues.

46.1 Does the national anti-discrimination law also cover multiple discrimination, including discrimination on grounds of a) sexual orientation, b) gender identity?

In Polish law there is no express definition and prohibition of multiple discrimination. Only in the labor law (Art. 18 LC) provides that direct or indirect discrimination can occur on the basis of one or several premises, which indirectly introduces this type of discrimination into the law. Because of the open catalogue of discriminatory premises in the LC, this means that this term can cover all cases of overlapping grounds of discrimination. Despite repeated recommendations of members of the Coalition for Equal Opportunities, no definition and prohibition of multiple discrimination and the was added to the AoET, although some EU instruments contain such references. The practical
consequence of the current legal situation is that in proceedings for violation of the principle of equal treatment, victims of multiple discrimination claim violation of only one characteristic protected by law, which results in damage to the claim. Polish law still treats various grounds for discrimination separately, as acting independently of each other, not mutually reinforcing and overlapping each other.

It’s worth noting that within the proposal for recommendation to the national action program for equal treatment prepared by PRT, a problem of cross-discrimination was recognized, but only in the context of discrimination based on ethnicity/nationality and gender.

46.2 Are national bodies is for the Protection of Human Rights authorized to deal with cases of multiple discrimination?

The recent 2012 Report on Multiple Discrimination\textsuperscript{277} shows that PRT, as the national body responsible for implementing government policy in respect of equal treatment, including anti-discrimination, have not yet adopted any position on the issue of multiple discrimination. Also in the normative acts setting up this body, there is no reference to the obligation of fighting this phenomenon. Similarly, AoHDR does not authorize the RPO to deal with cases of multiple discrimination. The information available to LGBT organizations indicates that this issue was not yet a specific subject of interest of that authority.

\textsuperscript{277} D. Cieślakowska, N. Sarata, Dyskryminacja wielokrotna – historia, teorie, przegląd badań [Repeated discrimination – history, theories, overview of research], Fundacja Fundusz Współpracy, Towarzystwo Edukacji Antydyskryminacyjnej, Warsaw 2012.
Legal references

ECHR – Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Journal of Laws 1993 No. 61, item 284, as amended);

CC – Act of 23 April 1964, The CC [Pol.: KC, Kodeks Cywilny] (Journal of Laws No. 16, item 93, as amended);

CrC – Act of 6 June 1997, The CrC [Pol.: KK, Kodeks Karny] (Journal of Laws No. 88, item. 553, as amended);

EPC – Act of 6 June 1997, The EPC [Pol.: KKW, Kodeks karny wykonawczy] (Journal of Laws No 90, item. 557, as amended);

RP Constitution – The Constitution of The Republic of Poland of 2 April 1997 (Journal of Laws No 78, item. 483, as amended);


CCP – Act of 17 November 1964, Code of Civil Procedure [Pol.: KPC, Kodes Postępowania Cywilnego] (Journal of Laws No 43, item 296, as amended);

CPP – Act of 6 June 1997, CPP [Pol.: KPK, Kodeks postępowania karnego] (Journal of Laws No 89, item 555, as amended);

FGC – Act of 25 February 1964, FGC[Pol.: KRio, Kodeks rodzinny i opiekuńczy] (Journal of Laws No 9, item 59, as amended);

CPO – Act of 20 May 1971, CPO [Pol.: KW, Kodeks wykroczeń] that is of 16 March 2010 (Journal of Laws No 46, item 275, as amended);

AoSoME – Act of 20 March 2009 on Safety of Mass Events [Pol.: UoBIM - ustawa o bezpieczeństwie imprez masowych] (Journal of Laws No 62, item 504, as amended);

AoCACB – Act of 9 June 2006 on CBA [Pol.: UoCBA, Ustawa o Centralnym Biurze Antykorupcyjnym] (Journal of Laws No 104, item 708 as amended);


TRA – Tenants Rights, Municipal Housing Stock and the CC Amendment Act of 21 June 2001 [Pol.: UoOPL, Ustawa o 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);

PA – police Act of 6 April 1990 (unified text, Journal of Laws No 287, item 1687 as amended);


AoCDV – Act of 29 July 2005 on counteracting domestic violence [Pol.: UoPPwR, Ustawa o przeciwdziałaniu przemocy w rodzinie] (Journal of Laws No 180, item 1493 as amended);


AoPELMI – Act of 20 April 2004 on promotion of employment and labor market institutions [Pol.: UoPZiIRP, Ustawa o promocji zatrudnienia i instytucjach rynku pracy] (unified text of 9 April 2008, Journal of Laws No. 69, item 415);


AoRPO – Act of 15 July 1987 on Human Rights Defender [Pol.: UoRPO, Ustawa o rzeczniku praw obywatelskich] (unified text of 9 February 2001 Journal of Laws No 14, item 147, as amended);

MGA – Municipal Guards Act of 29 August 1997 – [Pol.: UoSG, Ustawa z dnia 29 sierpnia 1997 r. o strażach gminnych] (Journal of Laws No 123, item 779 as amended);
AoGPA – Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland [Pol.: UoUC, Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej] unified text of 22 October 2009 (Journal of Laws No 189, item 1472 as amended);


MaDPA – Medical and Dental Practitioners Act of 5 December 1996 [Pol.: UoZLiLD, Ustawa o zawodach lekarza i lekarza dentysty] (unified text of 27 September 2011, Journal of Laws No 277, item 1634, as amended);

AoARORA – Act on Registry Office Records Act of 29 September 1986 [Pol.: UPoAC, Ustawa ‘Prawo o aktach stanu cywilnego’] (unified text of 31 August 2011, Journal of Laws No 212, item 1264);


LAA – Law on Assemblies Act of 5 July 1990 [Pol.: UPoZ, Ustawa ‘Prawo o zgromadzeniach] (Journal of Laws No 51, item 297 as amended);

PLA – Press Law Act of 26 January 1984 [Pol.: UPP, Ustawa.’ Prawo prasowe’ (Journal of Laws No 5, item 24, as amended);

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**Other Institutions**

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<td>Stowarzyszenie Kampania Przeciw Homofobii</td>
<td>Campaign Against Homophobia</td>
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<td>Polish Society of Anti-Discrimination Law</td>
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