



Alternative Report made by
Polish Society of Anti-Discrimination Law
and **Campaign Against Homophobia**
submitted to the Human Rights Council for the Universal Periodic Review
(13th session)

Introduction of the submitting organizations

Campaign Against Homophobia (KPH) was established in 2001 in order to protect the constitutionally and internationally guaranteed rights of lesbians, gays, bisexuals and transgender people (LGBT) in Poland. Our goals are to start and maintain a public discussion on the topic of sexual minorities, to establish a culture of tolerance towards LGBT, to bring an end to the prejudices and stereotypes regarding them and to stand up against violations of human rights, including employees rights. We engage in activities including: political lobbying, educational campaigns, petitions, monitoring national and international legislation. KPH serves the social change movement through collaborating with Polish and international nonprofit organizations and individuals working towards social justice and peaceful coexistence. The mission of KPH is to prevent the exclusion of marginalized groups.

Polish Society of Anti-Discrimination Law (PSAL) was established in 2006 and brings together a range of Polish law practitioners, policy experts, lawyers of Polish human rights NGOs and academics interested in promotion and improving anti-discrimination legislation and legal actions to enhance and achieve equality for all at the highest possible level. The areas of work are: academic research in the field of equality law; legal assistance and advices for those who face discrimination on the grounds of gender, sexual orientation, age, disability, religion/belief, race and ethnic origin; strategic litigation to ensure equality and human rights standards; ensuring social cohesion and progress as well as peaceful development.

PSAL focuses also on the monitoring of anti-discrimination legislation and human right laws in Poland and assesses its impact and efficiency. One of the most important PSAL activities is providing access to information on rights as well as leveling-up NGOs' skills and capacity with regard to protection of citizens' rights.

Organizations standpoint of fulfillment of the recommendations made to Poland during the 1st session of the Universal Periodic Review

Recommendation 6 (PSAL)

Recommended to Poland to adopt an anti-discrimination law that would ensure equal treatment and non-discrimination on any grounds, including sexual orientation and gender identity (Slovenia, United Kingdom and Sweden)

Main concerns related to recommendation nr 6 :

1. Lack of legal protection from discrimination for all people in all areas of life.
2. Lack of relevant national body for equal treatment.
3. Lack of funds for new power of Ombudsman.

In January 2011 entered into force *Act on the Implementation of Some Regulations of the European Union concerning Equal Treatment* dated December 3 2010. PSAL and Campaign against Homophobia express disappointment with the fact that the new act still does not ensure equal treatment on any grounds. Polish civil society organizations are also disappointed that Polish Government did not take into consideration their comments on the draft of new antidiscrimination Act.

Polish equality NGOs brought together into The Coalition for Equal Opportunities, coordinated by PSAL. The Coalition presented its own expertise on the draft law during social consultations. Despite this, the Government took into account only some of the NGOs proposals.

As a result the adopted Act on the Implementation of Some Regulations of the European Union concerning Equal Treatment has limited personal and material scope and does not safeguard such groups in such aspects of life as for example:

- Women in health care, private and family life and education
- LGBTI in health care, education, access to goods and services
- Disabled people in health care, education, access to goods and services
- Older people in health care, access to goods and services

The new anti-discrimination law has closed catalog of grounds of discrimination (gender, race, ethnicity, religion, believes, nationality, disability, age, sexual orientation).

The law includes the following concepts of discrimination: direct discrimination, indirect discrimination, harassment, sexual harassment, unequal treatment understood as direct discrimination. There are no regulations of discrimination by association and multiple discrimination.

According to the new Act, two public bodies were granted competences in the field of equality and non-discrimination: the Human Rights Defender as the independent body

overseeing the principle of equality and the Government Plenipotentiary for Equal Treatment carrying out governmental works on equality. The Human Rights Defender was granted new competences as follows: conducting independent surveys concerning discrimination; the analysing, monitoring and supporting of equal treatment of all people; publishing independent reports and making recommendations on any issue relating to such discrimination. Despite assigning all abovementioned equality competences to the Human Rights Defender, the level of financing of the body was significantly reduced compared to 2010 (around four hundred thousand Euros). This situation was protested by the Human Rights Defender who formally asked the speaker of the lower chamber of the Parliament to suspend provisions of the equality law, which grant the Human Rights Defender new competences in the field of antidiscrimination. This situation was heavily criticized by Polish equality NGOs who lodged a complaint to the Polish Prime Minister and the European Commission.

Recommendation 6 (KPH)

The scope of protection of LGB persons granted in the Antidiscrimination Bill is limited only to labor law and includes untypical employment agreements, self-employment, vocational training, access to labor union membership and memberships in other professional associations. There is no protection offered on the ground of sexual orientation in the scope of education, social security, health care and access to publicly available goods and services. The Bill does not provide horizontal protection for any of the vulnerable groups. According to the Bill gender identity is not listed as a possible ground of discrimination. The Bill does not mention cross-sectional discrimination.

Recommendation 12 (KPH)

Urge Poland to implement the recommendations made by the Human Rights Committee and the Committee against Torture to put in place legislative measures to sanction manifestation of repeated hate speech and intolerance (Slovenia)

There are no hate speech provisions in the Criminal Code (CC) that include sexual orientation and gender identity as a possible ground thereof or even a aggravating circumstance. Persons facing hate speech or hate crime due to their sexual orientation/gender identity have to use general CC provisions for common crimes that not include the hate bias, such as insult, violation of corporal integrity, violence, injury and punishable threats which results in lower penalties and more inconvenient procedure which includes private indictment. The draft amendment of the CC prepared by the NGOs has been filed in the previous term of the Parliament, and due to procedural policy, the legislation process has been discontinued.

Homophobia in the police force

Since 2010, KPH has been witnessing a growth in the number of complaints against homophobic behavior of police officers including hate speech and hate crime. Homophobia driven violence among the police is one of the most burning issues raised by KPH. Despite of the existence of 'Human Right Advisers' to local and head chiefs of police, their mandate which covers mainly coordinative and representative functions does not guarantee better

protection of individuals who were victims of police violations. What is more, in 3 cases handled by KPH in year 2011 of police homophobic misconduct, none of the disciplinary proceedings conducted against the officers resulted in any punishment.¹

Recommendation 17 (KPH)

Recommend to Poland that human rights defenders, in particular groups campaigning for equality and against discrimination based on perceived sexual orientation, are allowed to carry out their work in a secure environment, and that the rights of freedom of expression and association are respected (Canada).

Throughout the last 6 years there have been repeated cases of inadequacy of measures taken by city authorities and the police to secure Prides and other events organized by LGBT organizations.

In year 2011 alone, KPH received several complaints about different events, which did not get sufficient security from the city authorities and the police. In Zielona Góra during The Silent March, despite the fact that the organizers filed for police protection of the gathering, there were no officers present and acts of violence, hate speech and minor offences were committed aimed at the LGBT participants. In Krakow during Tolerance March, the participants were attacked by the far right extremists on their way back from the March. Some of them asked for help from police officers who protected the march earlier; they did not get any protection and were chased and beaten up by the hooligans.

While answering last recommendations the Polish government stated that ‘...to enhance the freedoms guaranteed by the Constitution, the Ministry of the Interior and Administration is preparing the amendment to the law on public assemblies, designed to ensure that the refusal by municipal authorities to allow a public assembly can be heard on appeal before the planned date of the assembly.’ – no such amendments have been made

Recommendation nr 18 (PSAL)

While commending the Government for the measures already taken in combating violence against women, recommended that steps continue to be taken to follow up on the recommendations of the Human Rights Committee and CEDAW (Canada).

In August 2010 entered into force new *Act on preventing domestic violence*. However amendment to the Act does not give better protection for victims of domestic violence and

¹ Additional information: According to Poland's draft CAT V and VI report although in years 2005-2010 60 state authorities per year were found guilty of ill-treatment, 2005-2009 none of the victims was granted any remuneration from the state. http://bip.ms.gov.pl/Data/Files/public/bip/prawa_czl_onz/v-i-vi-spraw-cat-viii-2011---projekt-do-ngos.doc, question 24

does not contain more effective regulation of punishment offenders. Warrant to leave local by perpetrators of domestic violence issued by Police has not been provided the same as obligation creating database and methodology on violence, taking into account the variable "sex of the victim".

Recommendation nr 22 (PSAL)

Recommended to Poland to continue to promote the participation of women in the public and political life of the country until they have gradually achieved a level of gender equality (Cuba).

The participation of women in the public and political life is still on the same low level. According to the new Electoral Code, each electoral list should consist of at least 35% of representatives of each gender but the results of the latest elections in Poland (9 October 2011) showed that the new law is not as effective as expected, and only 24% of Polish newly elected parliamentarians are of female gender.

Additional issues

KPH would also raise two important issues not mentioned in the Recommendations made by the Working Group on the Universal Periodic Review for Poland in year 2008. We believe that the below mentioned problems fall under the scope of interest of Human Rights Council and might be important as issues to rise during the process of reviewing Poland compliance with UN human rights standards.

Lack of gender recognition legislations

Gender recognition litigations have been conducted in Poland since the 1960s. Since the 1990s due to several judgments of the Supreme Court, decisions made in such cases have been based on the general provisions of Code of Civil Proceedings on 'determination of a right' [in this case: to identify with a certain gender]. The specifics of the case has been analyzed in the jurisprudence of the Supreme Court. Those findings are used by courts as guidelines to determine a specific case. Although in Poland Supreme Court rulings are not binding to the lower instance courts and are not a legal ground for adjudication; in lack of any provisions they are used as such. That created a situation where the testimony of the defendants (who according to the Supreme Court should be parents of a transsexual person) and an expertise of a sexologist are valued as equivalent evidence. There is also the necessity for changes in the plaintiffs body to be 'irreversible' in order to recognize his/hers desired gender. That leads to various, often arbitrary court decisions, ex. based only on the parents' testimony that they oppose their adult child's desire to be recognized legally as a male or a female.

Same sex relationships abroad

Poland does not legally recognize same-sex relations. Therefore Polish citizens often choose to form a relationship abroad. Before entering any legal binding relationship outside of Poland, be it marriage or civil partnership, same- or different-sex, all administrations require as a pre-condition that the fiancés are not already in such a union and have legal capacity to enter into one. Polish citizens can obtain proof of their civil status from Marital Status Offices.

Unfortunately, the Polish administration adopted a policy denying the issue of such required documents to Polish citizens planning to enter a marriage or civil partnership abroad with someone of the same sex. The administration argues that there is no legal basis for issuing such documents, since the Polish legal system does not know such institutions as same-sex marriage or same-sex registered partnerships. At the same time, Polish citizens wanting to enter different-sex marriage abroad, are granted abovementioned documents without any problems. The only reason for this denial is the applicant's sexual orientation.