

# Poland

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<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Poland/POL-CbC-V-2015-20-ENG.pdf>

- **Context information from ECRI**

p.10:

The Criminal Code does not explicitly prohibit incitement to violence, hatred and discrimination, or public insults and defamation, or the making of threats, on grounds of sexual orientation or gender identity. Homo/transphobic violence is present in schools, while homosexuality is still seen by a large section of the population as a disease and transgender persons are subject to certain instances of discrimination in access to healthcare.

- **Transphobia and data on hate crimes in the country**

27. Neither paragraph 1 of Article 256 of the current Criminal Code prohibiting incitement to hatred, the propagation of fascist or totalitarian ideology and the production and dissemination of racist material, nor Article 257 prohibiting public insults, specifically mentions sexual orientation or gender identity among the prohibited grounds. ECRI notes that several proposed amendments to the Criminal Code were introduced in 2011. Two of them concern the addition of gender identity and sexual orientation, among others, to the grounds enumerated in Articles 256 and 257, among others. The third amendment, introduced by the Civic Platform party in 2012, concerns the replacement of the existing grounds in these articles with wording referring to the victim's "natural or acquired personal qualities or beliefs".

28. ECRI recommends that sexual orientation and gender identity be explicitly added to the prohibited grounds in Articles 256 and 257 of the Criminal Code.

30. The situation remains largely unchanged today. ECRI must, however, draw attention to the issue of hate speech based on sexual orientation and gender identity (one of the topics of the fifth cycle). In this connection, reference is made to homophobic views expressed in parliamentary proceedings concerning the draft legislation on civil partnerships; the statement by a former Government Plenipotentiary for Equal Treatment concerning the dismissal of a homosexual teacher; the statements by a former President of the Republic during a television broadcast about the presence of homosexuals in Parliament, and inappropriate comments about a transsexual MP made by another MP, which were repeated and supported on Radio Maryja, belonging to the Warsaw Congregation of the Most Holy Redeemer (see §§ 33 and 40).

The authorities informed ECRI that, according to the police, 48 cases were brought in 2009 under Article 256, paragraph 1, of the Criminal Code; 54 in 2010; 81 in 2011; 86 in 2012; and 267 in 2013. This information can be compared with the figures provided by the Ministry of Justice in connection with Article 256: 17 prison sentences and 2 cases of conditional discontinuation were handed down in 2009; 7+0 in 2010; 9+1 in 2011; and 21+3 in 2012. It should be noted that data on homophobia and

transphobia are collected by the Ministry of the Interior and that these data show eight cases in 2013 (including three cases of violence and four cases of incitement to hatred) and four in 2012 (including one case of violence). From its examination of these data, it would appear to ECRI that the conviction rate has decreased in the last few years, providing an objective basis for the impression of impunity expressed by vulnerable groups and representatives of civil society.

Lastly, ECRI notes that hate speech is regularly the subject of statements by senior political figures, such as the condemnation by the President and the Prime Minister of the extremist violence which marred the Independence Day celebrations in November 2012 or the reactions of the new Government Plenipotentiary for Equal Treatment to homo/transphobic remarks made in Parliament.

92. The little information available comes from NGO surveys or academic studies, particularly at the instigation of the Government Plenipotentiary for Equal Treatment. Data from the Interior Ministry's Department of Control, Complaints and Petitions indicate only one incident of homo/transphobic violence in 2012 and three in 2013. As far as civil and administrative law is concerned, three cases were brought before the courts in 2012 under Article 13 of the Anti-Discrimination Act and, in each case, compensation was awarded. The report<sup>28</sup> published by the FRA in 2013 following its LGBT survey in the European Union shows that the situation of LGBT persons in Poland compares unfavourably with the European average in terms of: the feeling of having been discriminated against in the previous 12 months on grounds of sexual orientation (57% in Poland as compared with 47% Europe-wide), familiarity with the laws against discrimination (46% as compared with 56%), reporting incidents of discrimination (4% as compared with 10%), the feeling that homophobic language is very widespread among politicians (83% as compared with 44%), the feeling that homophobic jokes are very widespread in daily life (47% as compared with 37%), avoiding holding hands in public due to fear of homophobic reprisals (83% as compared with 66%), and avoiding certain locations due to fear of homophobic reprisals (61% as compared with 50%).

98. In the field of healthcare, the above-mentioned survey by the FRA shows that 13% of lesbians, 10% of gays, 9% of bisexual women, 10% of bisexual men and 16% of transgender persons had felt discriminated against by healthcare personnel in the previous 12 months. The collective of Polish LGBT associations cites studies by the University of Poznan showing that more than 20% of students regard homosexuality as a disease. This collective also reports difficulties of access for transgender women to andrology services and for transgender men to gynaecology services. It also notes a lack of knowledge and lack of sensitivity on the part of health practitioners regarding LGBT issues. The Polish authorities have highlighted the fact that, under the Order of the President of the National Health Fund of 29 March 2013, there is now the possibility of obtaining reimbursement of services granted to a person whose gender is different from that indicated in his or her administrative file. With regard to the problem of discrimination against transgender persons by medical staff, the Polish authorities state that this problem has been recognised and will be the subject of action under the National Action Plan for Equal Treatment 2013-2016.

- **Authorities' response**

37. The authorities informed ECRI that, according to the police, 48 cases were brought in 2009 under Article 256, paragraph 1, of the Criminal Code; 54 in 2010; 81 in 2011; 86 in 2012; and 267 in 2013. This information can be compared with the figures provided by the Ministry of Justice in connection with Article 256: 17 prison sentences and 2 cases of conditional discontinuation were handed down in 2009; 7+0 in 2010; 9+1 in 2011; and 21+3 in 2012. It should be noted that data on homophobia and transphobia are collected by the Ministry of the Interior and that these data show eight cases in 2013 (including three cases of violence and four cases of incitement to hatred) and four in 2012 (including one case of violence). From its examination of these data, it would appear to ECRI that the conviction rate has decreased in the last few years, providing an objective basis for the impression of impunity expressed by vulnerable groups and representatives of civil society.

42. Lastly, ECRI notes that hate speech is regularly the subject of statements by senior political figures, such as the condemnation by the President and the Prime Minister of the extremist violence which marred the Independence Day celebrations in November 2012 or the reactions of the new Government Plenipotentiary for Equal Treatment to homo/transphobic remarks made in Parliament.

44. ECRI recommends that the Polish authorities (1) draw up and implement a comprehensive plan for training police officers and prosecutors in the application of the Prosecutor General's guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint and on the conduct by prosecutors of proceedings in cases of hate crimes; (2) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (3) incorporate into the statistical system indicators for monitoring the effectiveness of the judicial system in dealing with hate speech cases; and (4) mount a large-scale campaign for tolerance addressed to society at large, as already recommended in the 4th cycle report.

61. ECRI recommends that the Polish authorities (1) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (2) reinforce the group set up by the Council against Racial Discrimination, Xenophobia and Related Intolerance to study the real scale of the hate crime phenomenon; and (3) study, in consultation with civil society, the phenomenon of extremist violence occurring on the fringes of the Independence Day celebrations and draw up a comprehensive action plan for preventing and combating it.

94. ECRI also notes that proposals for amendments to the Anti-Discrimination Act were introduced in June 2013 with the aim of including gender identity among the prohibited grounds and extending protection on grounds of sexual preference or gender identity to all areas of life. Regarding the possibility of persons of the same sex marrying or entering into a partnership in another country, the Polish authorities said that they intended to introduce draft legislation on civil status documents. The draft provided for the issuance of a neutral, universal certificate based on the information contained in the central registry instead of having numerous civil status documents relating to the same person,

thus enabling Polish citizens to sort out any administrative situation. Despite the assurances of the Government to ECRI, the amended Civil Status Act which was enacted does not regulate the possibility for issuance of a certificate for Polish citizens intending to conclude same-sex marriages in other countries. On the contrary, the law now more rigorously excludes the possibility of issuing this type of certificate. 29 Lastly, ECRI understands that a public consultation was held in April 2014 on draft legislation designed to facilitate sex and name change procedures, with a view to submitting it for parliamentary procedure, and that the legislation was drafted in close co-operation with civil society players representing transgender persons, the Ministry of Health and the Government Plenipotentiary for Equal Treatment.

99. ECRI recommends that the Polish authorities draft and submit to Parliament legislation, or amendments to existing legislation, in order to enshrine in Polish law the equality and dignity of LGBT persons in all areas of life.

100. For this purpose, the authorities should (1) amend the Anti-Discrimination Act to add gender identity to the protected characteristics; (2) ensure that civil status documents can be issued to any person wishing to marry or enter into a civil partnership in other countries where that is permitted, whatever the gender of the future spouse or partner; and (3) allow anyone wishing to change gender or name to do so without having to contest the gender registered by their parents at birth.

101. Finally, ECRI recommends that the Polish authorities ensure that the curricula of all branches of school, university and vocational education contain a section on LGBT persons and the fight against discrimination towards them, and provide inservice training programmes to raise awareness among all relevant professionals (including health professionals).

- **Legislative issues**

46. Neither paragraph 1 of Article 118 of the current Criminal Code prohibiting homicide, nor paragraph 1 of Article 119 prohibiting violence, nor paragraph 2 of Article 255 prohibiting incitement to crime, refers specifically to sexual orientation or gender identity among the grounds for hatred. ECRI notes that the various proposed amendments to the Criminal Code referred to above (see §27) are aimed also at amending Article 119 in relation to these prohibited grounds.

47. ECRI recommends that sexual orientation and gender identity be added to the prohibited grounds in Articles 118, 119 and 255 of the Criminal Code.

- **List of recommendations from ECRI**

5. (§ 28) ECRI recommends that sexual orientation and gender identity be explicitly added to the prohibited grounds in Articles 256 and 257 of the Criminal Code.

6. (§ 44) ECRI recommends that the Polish authorities (1) draw up and implement a comprehensive plan for training police officers and prosecutors in the application of the Prosecutor General's

guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint and on the conduct by prosecutors of proceedings in cases of hate crimes; (2) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (3) incorporate into the statistical system indicators for monitoring the effectiveness of the judicial system in dealing with hate speech cases; and (4) mount a large-scale campaign for tolerance addressed to society at large, as already recommended in the 4th cycle report.

8. (§ 47) ECRI recommends that sexual orientation and gender identity be added to the prohibited grounds in Articles 118, 119 and 255 of the Criminal Code.

9. (§ 61) ECRI recommends that the Polish authorities (1) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (2) reinforce the group set up by the Council against Racial Discrimination, Xenophobia and Related Intolerance to study the real scale of the hate crime phenomenon; and (3) study, in consultation with civil society, the phenomenon of extremist violence occurring on the fringes of the Independence Day celebrations.