

## Campaign Against Homophobia

# SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW (THIRD CYCLE)

## POLAND

### Submitting stakeholder:

Campaign Against Homophobia (KPH)

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### Summary:

This submission covers the issue of protection from discrimination based on sexual orientation, gender identity and gender expression in Poland in the years 2012-2016 in areas of access to education, health services and private life/family life.

#### 1. Right to privacy/family life

##### Recommendations made to Poland during previous cycle of UPR in 2012

1. 90.71. The adoption of policies that safeguard the rights of LGBT people and fight discrimination based on sexual orientation ( Brazil );
2. To adopt legislation that recognizes the rights of same-sex couples and of persons who independently define their gender identity as well as the rights of transgender persons (69. Australia);

3. To adopt legislation enabling same-sex couples to enter into a civil union contract (97. France);

None of the above mentioned recommendations has been supported by Polish state, yet KPH still strongly recommends adoption of legislation enabling same sex couples entering into civil union. Lack of recognition of same sex couples leads to discrimination of both same-sex couples and of trans people in marriages who need to divorce in order to receive legal gender recognition.

Currently there are no legal measures enabling same sex couples to register their relationship. Current government's program does not include introduction of civil partnerships or marriage equality. During the previous term of Parliament, three bills on civil unions were submitted, all by groups of MPs. None of them gained a majority vote to be further proceeded.

Polish citizens who intend to get a civil partnership or marriage with a same sex partner in a foreign country encounter barriers when requesting a civil status certificate.

Due to The Law on civil status a person applying for a civil marital status certificate was required to state the name and the surname of the future spouse. In case when the civil servant identified the name/surname of the future spouse as being of the same sex as the applicant, they often refused to issue the civil status certificate. The reasoning for refusal of certificates was based on the fact that art. 18 of Polish Constitution *defines marriage as a relationship of a man and a woman*. Therefore, according to Polish law which does not recognize same sex relationships, applicant is not legally eligible to get a marital status certificate. Polish legislator decided to amend the law on civil status. The new law<sup>1</sup> (that came into force on 01.03.2015) enables citizens to obtain a certificate of marital status in two forms, according to art. 49, a certificate of marital status not specifying the purpose of its usage and art. 83 certificate obtained in order to confirm applicants legal entitlement to get marriage abroad. When applying for the certificate of marital status according to art. 83, applicant has to specify the name, surname and sex of applicant and the future spouse. In case when sex of the applicant and the future spouse is the same, the applicant is refused the certificate.

Several discriminatory practices have been observed regarding attempts of Polish citizens in same sex marriages/civil partnerships to obtain a birth certificate for children born outside of Poland. This discriminatory practice might be exemplified by Katherine M. and Zofia M.'s case. Katherine M. a British citizen and Zofia M., a Polish citizen, who got a civil partnership in Great Britain. Katherine M. gave birth to their daughter Maria M. In 2011. In Maria M.'s British birth certificate, Katherine appears as a birth mother, and Zofia M. as a parent. Zofia M. applied in Registry Office in Lodz for transcription of her daughter's birth certificate into the Polish birth registry, however, she was refused the transcription. Lack of transcription of birth certificate

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<sup>1</sup>

<http://isap.sejm.gov.pl/Download.jsessionid=54FBD6FF9CBCB0BEA2BB4F13E94773C8?id=WDU20140001741&type=3>

makes it impossible to obtain Polish citizenship. The reasoning of the refusal was based on argument that transcription of the British birth certificate with two parents of the same sex would be in contradiction with basic rules of Polish law, as it does not legalize same sex couples and Polish legal system consolidates traditional model of the family.

Zofia M. has challenged the decision at the Voivoidships Governor's, Voivoid's Administrative Court and Supreme Administrative Court, however all instances upheld the Register's Office decision. Zofia M. has lodged a complaint in the European Court of Human Rights, the case is pending. Few similar cases are pending for ruling in Polish courts.

Same sex couples also face institutional discrimination when attempting to change surname to partner's. According to The Law on Changes of Names and Surnames, change of the name has to be justified by an important reason. In some cases, however, Registry Office refuses to change the name of the applicant when the reason given is being in a same sex relationship. Registry Office usually justifies the decision reasoning that same sex partnership is not legal in Poland.

## 2. Right to privacy/family life

### Recommendations made to Poland during previous cycle of UPR in 2012

1. 90.71. The adoption of policies that safeguard the rights of LGBT people and fight discrimination based on sexual orientation ( Brazil );
2. 90.67. Guarantee the full enjoyment of the rights of the LGBT community ( Spain );
3. To implement reforms giving every citizen the right to the highest attainable standards of health care on the territory of Poland (110. Australia);
4. To take further steps to promote and protect the human rights of minorities, in particular in the area of health care, employment and housing (114. Mexico);

All of above mentioned recommendation have been supported by the state.

According to KPH's research<sup>2</sup> and information obtained from its legal and psychological counseling clients, LGBTI patients in Poland face barriers in access to health services. Study<sup>3</sup> conducted by Ombudsman office proved that more than 20% of LGBTI patients face discrimination within healthcare system. Among frequently violated patients' rights in relation to LGBT people were the access to the information for the significant other, the right to dignity and privacy, and the right to healthcare services at the highest possible level.<sup>4</sup>

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<sup>2</sup> *Social Situation of LGBT in Poland*, KPH, Lambda Waszawa, Trans-Fuzja, 2012, p. 56-60, [http://www.kph.org.pl/publikacje/Raport\\_badania\\_LGBT\\_do\\_netu.pdf](http://www.kph.org.pl/publikacje/Raport_badania_LGBT_do_netu.pdf)

<sup>3</sup> *Equal treatment perceived by non-heterosexual patients in healthcare*, Polish Ombudsman Office, 2014 [https://www.rpo.gov.pl/sites/default/files/BIULETYN\\_RZECZNIKA\\_PRAW\\_OBYWATELSKICH\\_2014\\_nr\\_7.pdf](https://www.rpo.gov.pl/sites/default/files/BIULETYN_RZECZNIKA_PRAW_OBYWATELSKICH_2014_nr_7.pdf)

<sup>4</sup> *Equal treatment perceived by non-heterosexual patients in healthcare*, Polish Ombudsman Office, 2014

Problem partially stems from lack of curricula regarding LGBTI issues in medical universities which was proven by KPH's monitoring.

Large proportion of medical practitioners see homosexuality as a pathological problem which requires psychiatric intervention (treatment). Also medical students lack knowledge on homosexuality and share harmful stereotypes about this group, for example 20% of medical students on their senior year think that homosexuality should be treated.<sup>5</sup> Students think of homosexuality a pathological, due to the fact it is present in medical training and training materials.<sup>6</sup> In March 2015, KPH has sent a request to Ministry of Health to recommend to authorities of medical academies inclusion of antidiscrimination curricula regarding LGBT patients. In response, the Ministry of Health stated that medical professionals are adequately trained during studies and due to the autonomy of medical universities no action is possible. KPH also approached Commissioner for Patients' Rights in order to offer cooperation regarding increasing level of awareness LGBTI patients about their rights. In response Commissioner for Patients' Rights stated that no action is required to ensure LGBTI patients rights, due to lack of reported cases. Commissioner has not expressed the will of cooperation to tackle underreporting.

Previous Plenipotentiary for Equal Treatment (Wojciech Kaczmarczyk) numerous publicly questioned methodology of Fundamental Rights Agency's research regarding level of discrimination of LGBT people, stating that it cannot be evidence to start work on LGBT issues, including health. <sup>7</sup>

### 3. Right to education

#### Recommendations made to Poland during previous cycle of UPR in 2012

90.71. The adoption of policies that safeguard the rights of LGBT people and fight discrimination based on sexual orientation ( Brazil );

#### ***Policies regarding LGBTI in the system of formal education***

There are no policies and standards, which would ensure equal treatment and safety of LGBTI persons in schools in Poland. Many schools even deny the existence of LGBTI students. Students who complain about homophobia at school often turn to KPH. They experience homophobic behavior not only from other students, but also from teachers and educators.

The Ministry of Education is unwilling to cooperate with civil society organizations representing the LGBTI community. Although many attempts of contact were undertaken by KPH

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<sup>5</sup> *Konteksty społeczno kulturowe sytuacji pacjentów nieheteroseksualnych korzystając z systemu usług systemu ochrony zdrowia, na terenie Polski*, Agnieszka Żok, Uniwersytet Medyczny im. K. Marcinkowskiego w Poznaniu, katedra Nauk Społecznych

<sup>6</sup> *Professionally speaking: challenges to achieving equality for LGBT people*, Fundamental Right Agency, March 2016

<sup>7</sup> <http://wyborcza.pl/magazyn/1,124059,20031971,rownosc-wedlug-wojciecha-kaczmarczyka-pelnomocnika-rzadu-ds.html>

– no cooperation has been launched so far. Since 2013 KPH is a member organization of the Coalition for Antidiscriminatory Education, which advocates for systemic introduction of holistic, non-discriminatory principles in the system of formal education. The Coalition annually attempts to establish contact with the Ministry through official correspondence as well as meetings with Ministry staff but it has not started official cooperation. The only instance the Ministry for Education addressed the issue of homophobia in schools was on Sept. 1, 2015. As school year starts on this date, it is customary that the minister addresses the school communities across Poland in an open letter. The minister has announced a “Year of an open school [...], such that counteracts discrimination and homophobia.” The event that preceded such reaction was possibly a vigil in front of the Ministry for the teen, who committed suicide as a result of an intensive bullying and no substantial reaction of the school.

There are no legal provisions that mention sexual orientation or gender identity as a possible discrimination ground in the formal education system. The so-called ‘Equality Act’ of 2010<sup>8</sup> does not protect LGBTI persons in access to education. According to KPH’s studies, sexual orientation continues to be a taboo in schools. LGBTI students are not provided with necessary information, protection and support to enable them to live in accordance with their sexual orientation.

Sexual orientation or homophobia as a phenomenon are not discussed or counteracted – more than 60% of students admit that the subject is not brought up by teachers during classes<sup>9</sup>. At the same time 23,5% of cases of verbal violence towards LGBT people in Poland happened at school<sup>10</sup>. The situation is even worse when it comes to physical violence – almost 40% of homophobic attacks take place at learning facilities. 76% of students admit that homophobic language is present in their school, 26% have noticed physical bullying such as kicking, spitting, pulling. Additionally, 40,2% of school staff is reported to have ignored such behaviours. Because of that only 12,6% of students are completely ‘out’ in their school environment, the rest feels the need to conceal their sexual orientation in some way. There is no data on suicide rate of young people due to homophobic bullying, but studies show that LGB teens have suicidal thoughts 5 times more often than their peers in the general population (accordingly 62,7% and 12,3%<sup>11</sup>).

### ***LGBTI issues in the school curricula***

Information about sexual orientation is to some extent present in the school curricula. However, it is not provided in an objective and respectful manner. Neither does the school curriculum contain references to gender identity, yet gender is seen exclusively in the bill on implementation of some EU equal treatment regulations (Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania, Dz.U. 2010

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8 Dz.U. 2010 nr 254 poz. 1700 (isap.sejm.gov.pl/DetailsServlet?id=WDU20102541700)

9 Dz.U. 2010 nr 254 poz. 1700 (isap.sejm.gov.pl/DetailsServlet?id=WDU20102541700)

<sup>10</sup> *Lekcja Równości. Postawy i potrzeby kadry szkolnej i młodzieży wobec homofobii w szkole*, Jan Świerszcz, KPH, Warszawa 2012

<sup>11</sup> *Sytuacja społeczna osób LGBT. Raport za lata 2010 i 2011*, Mirosława Makuchowska, Michał Pawłęga, Warszawa 2012

nr 254 poz. 1700. The curriculum does not seem to feature elements educating about transgender issues in the manner compliant with the current standards of human rights.

At the same time teachers admit that they lack competence and skills to deal with homophobic bullying at schools. Half of them stated that more training on the subject would help them address homophobic incidents at schools properly. The documents concerning the standards for teacher training do not require teachers to be appropriately qualified to conduct anti-discrimination education or combat discrimination in school. Also more than half of the teachers admit that the subject of homosexuality is not present enough in the school curricula<sup>12</sup>.

### ***Discrimination in school: recent studies and practices (2012-2016)***

The most recent KPH's project related to youth in the system of formal education "Equal school - without discrimination and violence" (2014-2016), projects "Equality lesson" (2012-2014) were designed to assist schools evaluate its culture with regards to existing equal treatment policies, plan and successfully address the needs of school in terms of non-discriminatory education and good practices. Nonetheless, the project also has shown that public institutions' support for such activities in the system of formal education is virtually non-existent. Currently schools are obliged to address the issues of inequality, discrimination and social exclusion and conduct non-discriminatory education (in accordance with the Decree of Ministry of Education regarding pedagogical supervision<sup>13</sup>). Nevertheless, principals, teachers and school counselors, who are responsible on the school's part, have little to no knowledge and skills regarding discrimination and exclusion, especially regarding LGBTI persons, left alone methods of non-discriminatory education. Various reports ("The Big Absent", TEA, 2011<sup>14</sup>; "Equality Lesson. Attitudes and needs of school staff and youth in terms of homophobia in schools", KPH, 2012; "Discrimination in schools - presence unjustified", TEA, 2015<sup>15</sup>) address the issue that school staff is not given any means to familiarize themselves with non-discriminatory education in the process of training as a professional group. One of the key findings of the researches proves that educators who have not received relevant trainings conduct ecological/democratic/preventive education mistaking it for non-discriminatory one. In response to that problem, the project aims at engaging relevant stakeholders and bodies responsible for contents and programs in pedagogical studies and courses to investigate good practices, create an adequate programs fit for practical appliance and disseminate them among the future and present

### ***Case of Gymnasium in Piątkowisko***

Adam Mickiewicz Gymnasium in Piątkowisko is one of the four schools in Poland, which took part in the project "Equal school - without discrimination and violence." The tasks of the schools

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<sup>12</sup> *Lekcja Równości. Postawy i potrzeby kadry szkolnej i młodzieży wobec homofobii w szkole*, Jan Świerszcz, Warszawa 2012

<sup>13</sup> <http://dziennikustaw.gov.pl/du/2015/1270/1>

<sup>14</sup> [http://www.tea.org.pl/userfiles/file/Wielka\\_nieobecna\\_raport.pdf](http://www.tea.org.pl/userfiles/file/Wielka_nieobecna_raport.pdf)

<sup>15</sup> [http://tea.org.pl/userfiles/raporty/raport\\_tea\\_dyskryminacja\\_w\\_szkole.pdf](http://tea.org.pl/userfiles/raporty/raport_tea_dyskryminacja_w_szkole.pdf)

in the project were, among others, to analyze the situation in the school in context of discrimination and unequal treatment as well as existing anti-discrimination activities, to plan and carry out anti-discrimination events corresponding to the needs and capabilities of school and to develop an anti-discrimination strategy in any form (eg. a calendar of events, change or introduction of school internal documents, etc.). All stages of the project at the school were conducted under supervision of an anti-discrimination trainer, which helped with all stages of the project.

"Focus on Diversity" was one of the events planned by the school in response to appearing homophobic hate speech. A few weeks after the event, local media, alerted by a local cell of the nationalist National Radical Camp group, described the case of activities in the school, which led to the intervention of the city mayor ordering the principal to take down any materials produced during the workshop off the school walls. Despite letters of support sent on behalf of Ombudsman, Amnesty International, and Association for Anti-discriminatory Education, KPH and the others, the Regional Superintendent on Education accused the principal of ineffectiveness of pedagogical supervision and failure to content to the age of the students. KPH agreed to challenge the report examination to the Ministry of Education. Re-examination conducted by the Superintendent maintained the decisions and conclusions of the previous analysis. Persons involved in the project, both teachers and students felt bullied on one hand by the right-wing media and nationalist organizations, and on the other, by the Regional Superintendent.