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Intersections between disabilities and sexual orientation, gender identity and sex characteristics: The situation in Poland

Alternative submission
to the UN Committee on the Rights of Persons
with Disabilities (CRPD)

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Executive Summary

The present report is describing problems faced by persons because of their both real or perceived disability and sexual orientation, gender identity or intersex status.

The following specific problems are identified:

- (1) Access to health care of LGBT persons with disabilities;
- (2) Reparative therapies causing mental health conditions;
- (3) Independent living and community participation; and
- (4) Bias-motivated violence and hate speech.

The report is divided into four section, according to the above-mentioned problems, and each chapter includes description of the situation, examples of specific cases, as well as proposed questions to the Polish Government and suggested recommendations to be taken into account to improve the situation and to ensure full implementation of the CRPD Convention in the State Party.

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Suggested Questions for the List of Issues

1. Access to health care of LGBT persons with disabilities (Articles 5, 8& 23 of the CRPD Convention)

1. Is the government planning to increase protection from discrimination for LGBT persons with disabilities by amending Equal Treatment Act, so that it encompasses such spheres of life as: access to education, health care, goods and services?
2. Does the government plan to introduce amendments to Equal Treatment Act, so that it encompasses definitions of multiple and intersectional discrimination?
3. What measures is Poland planning to implement to reduce health inequalities faced by persons with disabilities?

2. Reparative therapies causing mental health conditions (Articles 5, 15& 16 of the CRPD Convention)

1. What measures has the State taken to address the problem of conversion therapies?
2. What measures has the State taken to tackle the problem of widespread notion that homosexuality is a disease?
3. Is the State planning to introduce any legal regulations regarding provision of psychotherapeutic services?

3. Independent living and community participation (Articles 5, 8, 12& 19 of the CRPD Convention)

1. When and how the State aims to introduce integrated Personal Assistance services?
2. What measures is the State implementing to ensure that persons with disabilities enjoy independent living?
3. When will the State replace incapacitation with the supported decision-making system?

4. Bias-motivated violence and hate speech (Articles 5, 6, 8, 9, 13, 14, 15, 16 & 17 of the CRPD Convention)

1. What is the government doing to fulfill its pledge to recognize hate crimes and hate speech based on disability, gender identity and sexual orientation in the Criminal Code, made at the Human Rights Council in 2012 and 2017, as well as by other bodies, including UN Committee against Torture, Committee on the Rights of the Child, and the Human Rights Committee? By when is the government planning to complete this task?

Proposed Recommendations

1. Access to health care of LGBT persons with disabilities (Articles 5, 8&23 of the CRPD Convention)

1. To amend Equal Treatment Act by adding protection based on disability, sexual orientation, gender identity or sexual characteristics in access to health care, education and goods and services.
2. To implement non-biased sexual orientation and gender identity issues in medical curriculum in higher education system for future medical staff, and to provide measures enabling the increasing of competences among medical practitioners regarding taking care of LGBT patients, especially those with disabilities.

2. Reparative therapies causing mental health conditions (Articles 5, 15& 16 of the CRPD Convention)

1. To introduce legal regulations regarding providing services of psychotherapy.
2. To introduce a legal regulations banning the so-called “conversion” or “reparative therapies”.

3. Independent living and community participation (Articles 5, 8, 12& 19 of the CRPD Convention)

1. To implement integrated Personal Assistance services system.
2. To address actions with regard to intersectionality and multiple discrimination faced by persons with disabilities.
3. To replace incapacitation by supported decision-making system.

4. Bias-motivated violence and hate speech (Articles 5, 6, 8, 9, 13, 14, 15, 16 & 17 of the CRPD Convention)

1. To recognize hate crime and hate speech based on disability, gender identity and sexual orientation in the Criminal Code;
2. To redouble efforts to detect and record all cases of hate crimes reported to the police;
3. To ensure that rights of hate crime victims are recognized in the criminal justice procedure and that publicly funded victim support services address specific support and protection needs of hate crime victims.

Introduction

By signing the ratification act in 2012, Poland committed to implementation of the provisions of the UN Convention on the Rights of Persons with Disabilities. Both in the Convention and the Social Alternative Report on its implementation in Poland (2015) and update of the report (2017), the subject of gender identity and sexual orientation of persons with disabilities has not been included. In Poland, the topic of sexuality of people with disabilities is still marginalized or is not discussed at all, and unequal treatment with regards to real or assumed sexual orientation or gender identity occurs. Everyday functioning of LGBT persons with disabilities in a society becomes a constant necessity to overcome (negative) stereotypes related to both disability and non-heteronormativity. System support is too small or inadequate. In Poland, persons with disabilities are mostly placed in the social care system, which works in the way that favours lack of active attitude towards professional activity, as support is based on the income level.

Also outdated terminology is still in use (e.g. translation of UN CRPD uses old term instead of “person with disability”), and medical approach to disability means that people with disabilities are automatically locked in one category, which in turn means the persons with disabilities are deprived of any sexual rights.

Poland has not signed nor ratified Additional Protocol to the Convention, as well as Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The prohibition of discrimination, also on the grounds of sexual orientation and gender identity, operates only in the area of employment and results from the provisions of the international law ratified by Poland.

Offices, courts of justice, hospitals, gynecological examination rooms are not adapted to the needs of persons with disabilities. These barriers impede the use of services and effective enforcement of their rights on an equal basis with others. Quoting the Human Rights Commissioner: "The widespread stigmatization of LGB persons results in the lack of action by state institutions to respond adequately to health-related problems. The rapporteur stressed that health services should be accessible to all, without discrimination, especially for people particularly vulnerable to unequal treatment or marginalized. Lack of full access to health care creates an atmosphere in which persons deprived of the right to decide about themselves cannot achieve full implementation of other human rights"¹.

In the situation of necessity of gender correction, documents exchange, necessary medical procedures or contact with psychologist or psychiatrist, people with disabilities who are at the same time non-heteronormative / intersex face a number of barriers – architectural, institutional or connected with societal attitudes. They are exposed to double exclusion, based on disability, and e.g. sexual orientation. Physical, procedural and communicative accessibility must be ensured to fulfill the rights to dignity, access to education, health care, and judiciary for persons with disabilities.

Polish State does not disseminate knowledge about transgender issues. There is noticeable lack of anti-discriminatory education, as well as data and research on situation of non-heteronormative persons with disabilities.

Description of the existing problems

1. Access to health care of LGBT persons with disabilities (Articles 5, 8& 23 of the CRPD Convention)

In the Polish context, the issue of unequal treatment of LGBT persons with disabilities in health care has been studied for a short time. The data allowing the analysis and description of the phenomenon, taking into account patients perspective, are those published by the Campaign Against Homophobia, Lambda Warsaw and the Trans-fusion Foundation in 2012 and 2017, as well as included in the reports of the Institute of Psychology of Polish Academy of Science², and information from the bulletin issued by the Office of the Commissioner for Human Rights (RPO) from 2014.³

Although attitudes towards LGBT people throughout Europe are often said to have greatly improved in recent decades, LGBT people still experience negative attitudes and outright discrimination including that from health care providers (HCPs).⁴ This extends to healthcare, and to the experiences related to both interventions from professionals and from non-clinical staff. LGBT people continue to experience healthcare inequalities in the form of negative attitudes and discrimination from healthcare staff, and the wider literature shows that LGBT people report worse treatment in healthcare setting than non-LGBT people.⁵ Such discrimination can become an active barrier to LGBT people accessing appropriate healthcare services.

As focus groups report from Health4LGBT⁶ stated: Reducing health inequalities experienced by LGBT people shows barriers to accessing services can also stem from other forms of discrimination, which can result in LGBT people avoiding healthcare service altogether. In addition to LGBT identities, the data also reveals that intersectionality – that is, the unique issues which arise when a person inhabits two or more marginalized identities or positions – was seen by respondents as being poorly understood in healthcare services. Intersectionality can incorporate both sexual orientation and gender identity, as well as age, class, disability and race/ethnicity. These aspects of a patient's life should not be seen in isolation as their 'intersection' can result in unique issues of discrimination and inequality.

Findings of research by Friedriksen-Goldsen indicated that the prevalence of disability is higher among lesbian, gay, and bisexual (LGB) adults compared with their heterosexual counterparts; LGB adults with disabilities are significantly younger than heterosexual adults with disabilities.⁷

Research on disability has identified both non-modifiable risk factors such as age, gender, and genetics, and modifiable risk factors such as age-related diseases, impairments, functional limitations, poor coping strategies, sedentary lifestyles, and other risk behaviors in addition to social and environmental obstacles. The findings of this study underscore the importance of disaggregating subgroups of these populations to better understand their unique health care needs. Although LGB adults in general were at increased risk of disability, they showed some disparate patterns in health risk behaviors and chronic conditions associated with disability. These disparate patterns may be important to understand more fully to effectively develop and target prevention efforts. Compared to their heterosexual counterparts, LGB older adults are at an elevated risk of disability and mental distress. Forty-one percent of LGB adults age 50 and older have a disability; this means there are at least 1 million LGB older adults living

with a disability, and this number could double by 2050. While the research is thin on transgender older adults, it can be assumed that many transgender people, of all ages, also live with disabilities.

Although research has confirmed that coming out may be important for adequate medical treatment, homosexual persons with disabilities can face refusal of treatment due to homophobic attitudes of medical professionals.

As a homosexual person, I have met with the refusal of treatment. Well I was regularly refused of treatment... medication... physiotherapy. The physiotherapist from the hospice (I have a birth defect of connective tissue and it's very difficult to find a physiotherapist who wants to work with this disease) I asked him, he is a volunteer for the foundation, and I asked him if he knew anyone he could get me in touch with. And everything would have been fine if he hadn't noticed KPH (Campaign Against Homophobia) on my Facebook profile, as we've communicated through Facebook, and he claimed that he was not going to help such people and that he was not going to treat me and he was not going to put me in touch with any doctors, as such people should end up in a gas chamber... this man works in the hospice. I still have print screens of the comments he left. So this is very much a hidden sphere and forces us to some extent to stay in the closet. (Iwona, 40 years old)⁸

Deprivation of access to health care or rehabilitation, lack of necessary assistance or neglect become tools of homophobia against disabled individuals. In consequence, LGBT persons with disabilities, due to the fear of being deprived of necessary support, may postpone coming out. Due to the fact that protection based on sexual orientation is included only in the Labour Code, and the Act on the implementation of selected European Union regulations in the field of equal treatment does not include protection against discrimination based on sexual orientation, gender identity or disability, there are no tools in the Polish legal system that could protect LGBT people with disabilities. Current mechanisms of protecting patients in the health care system do not provide protection due to sexual orientation, gender identity and sex characteristics. The protective mechanism is built based on the patient's initiative and is based on complaints submitted to medical provider, medical self-government or the Patient's Rights Commissioner.

Lack of the above-mentioned legal regulations and the situation described above breach art. 5(2), art. 8, and art. 23 of the CRPD, as the Polish State does not provide effective legal protection against discrimination for LGBT persons with disabilities, or LGBT persons perceived as having a disability, who have been discriminated against while accessing health care sector or any other healthcare professionals. The Polish state does not take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to the sphere of marriage, family, parenthood and relationships, on an equal basis with other citizens.

Recommendations:

1. To amend Equal Treatment Act by adding protection based on disability, sexual orientation, gender identity or sexual characteristics in access to health care, education and goods and services.
2. To implement non-biased sexual orientation and gender identity issues in medical curriculum in higher education system for future medical staff, and to provide measures enabling the increasing of competences among medical practitioners regarding taking care of LGBT patients, especially those with disabilities.

Questions:

4. Is the government planning to increase protection from discrimination for LGBT persons with disabilities by amending Equal Treatment Act, so that it encompasses such spheres of life as: access to education, health care ,goods and services?
5. Does the government plan to introduce amendments to Equal Treatment Act, so that it encompasses definitions of multiple and intersectional discrimination?
6. What measures is Poland planning to implement to reduce health inequalities faced by LGBT persons with disabilities?

2. Reparative therapies causing mental health conditions (Articles 5, 15& 16 of the CRPD Convention)

According to a recent research, 27% of LGBTIA (lesbian, gay, bisexual, trans, intersex and asexual) persons living in Poland have severe symptoms of depression⁹, while among the general population it is 5%¹⁰. This discrepancy stems from the high level of stigmatization, discrimination and violence that is experienced by non-heterosexual and transgender community in Poland. Studies show a significant impact of these phenomena on well-being of LGBT persons.

As the depression is categorized as a disorder in DSM-5 (Diagnostic and Statistical Manual of Mental Disorders, American Psychiatric Association) and can be a basis for assessing the degree of disability or incapacity in Poland, and at the same time LGBT persons are six time more endangered by it than non-LGBT persons, increased measures should be taken to prevent the disease among this group.

However, access to professional and non-discriminatory mental health care for LGBT people is hindered. Many mental health professionals in Poland lack up-to-date knowledge about sexual orientations and gender identities and share popular stereotypes about LGBT persons which leads to discrimination and unprofessional health service. On many occasions, LGBT patients who seek help among mental health professionals due to their mental health conditions not related to their sexual orientation of gender identity, are suggested to undergo "treatment" to convert to heterosexuality. LGBT persons with disabilities are considered to be a vulnerable group (e.g. due to living outside their communities, in group housing or segregated schools)that is exposed to unwanted treatment.

"I went to a Catholic boarding school because my parents are Catholics and it was important for them that I should be raised in the same faith. It was a small school, easier to grasp for a disabled person but completely inaccessible for people with disabilities. I went there to a school psychologist to talk about my problems. They caught me a few times crying that I did not eat and that sort of thing, so I was sent there. And after talking to a psychologist several times, when I just told her I had a girlfriend there and what was going on in this relationship. I was called to the principal's office and they asked me whether I was a lesbian, which I thought was quite shocking at the time. And when I nodded, I got to sign the letter that I would go for a treatment that after a year would prove if I was able to get back to school in good condition. And it was something like a conversion therapy. I called my mum and, of course, she did not agree to it and I changed schools. For me, it was shocking that in the 21st century something like this still happened. And it seems to me that people with disabilities are an easy target when it comes to some kind of persecution ... even easier because they cannot always defend themselves. They do not always have someone behind them, they do not always have the strength, because they are also in constant pain, for example like me ... and it is very hard without support." [Zofia]¹¹

Due to a widespread stigma on homosexuality (79% of people living in Poland think that homosexuality is not a normal condition¹²), lack of sexual education and rejection from the closest family, many non-heterosexual persons seek therapies that would effect in converting to heterosexual orientation.

"I have been suffering from depression and anxiety disorders for many years now. I also take psychotropic medications. My psychiatrist recommended that I should undergo a psychotherapy, so I signed up to the therapist he recommended. The psychotherapist had a certificate of the Polish Psychological Association, so I trusted that she was a specialist. After 3 months I told her I that I was a lesbian. I did not want to do it earlier because I was afraid of how she would react and I had no problem with my sexual orientation. Her first reaction was, that we should discuss it in more depth because "homosexuality" is treatable. I did not want to "convert", but she kept coming back to this subject, explaining to me why I was gay and that I should "treat it" because I will not have a happy life otherwise. I finally gave up the therapy. I was angry because I needed therapy at that time to deal with my anxiety and depression. I was very disappointed and discouraged to seek professional help. I was afraid that someone would try to "treat" my homosexuality again. Because of this, I had recurrence of depression more often. I wrote a complaint to the Polish Psychological Association about this therapist, but I never got a reply from them." [X, 33 years old, lesbian]¹³

Despite the fact that The World Health Organization's International Classification of Diseases has had "homosexuality" removed as a disease, and numerous mental health organizations¹⁴ find conversion therapies unethical, ineffective and causing mental health issues such as depression and anxiety, conversion therapy is still offered by Polish therapists. One of the centers that offers curing from homosexuality is Association Help 2002 that has been operating in Radom city for over 15 years. The therapy takes forms of both group and individual meetings with the association's leader Mirosław Chmura, who is not a psychologist. Therapeutic methods used by Mirosław Chmura are unethical and in many occasions are a form of sexual abuse.

Here are testimonies of a young men who underwent a therapy in Help 2002 Association.¹⁵

"He (Mirosław Chmura) was cuddling the other boys. He was also cuddling me and slept with me in one bed... I felt as if I was a part of some examination. He also asked boys to show him their penises, so he could judge if they are small. He looked at the penises and said that they are all right, that they are real men."

"Paweł (a nickname of Mirosław Chmura) suggested that we should do many activities naked, like playing football or sleeping together. It was supposed to teach me how to not connect masculine nudity with sexual desires. He also said that I have to stop all my contact with friends and family. Masturbation was forbidden, if someone broke the rule he had to pay a fine up to 150 PLN."

Despite many interventions by local authorities and non-governmental associations the centre still operates.

Lack of binding legal regulations regarding the profession of a psychologist or a psychotherapist is an obstacle in preventing such abuses as described above. According to the Polish law, a profession of a psychologist is regulated by the a Bill of 8th June 2001 on Profession of a psychologist and self-government of a psychologists. After 6 years of vacatio legis, the Bill has come into force on 1st January 2006. However, until now, the self-government bodies have not been established and relevant enforcement acts have not been introduced. Therefore, in a practical sense, there are no legally binding regulations regarding the profession of a psychologist, therefore any person who is willing to offer psychological counseling can do so. The only requirement is to register the company under code PKD 86.90.E of the Polish Classification of Business Activities. At the same time, there are no legal regulations regarding offering conversion therapies.

Lack of the above-mentioned legal regulations and situations described above breach arts. 15(2) and 16(2) of the CRPD and can lead to abuses, violence and degrading treatment of LGBT persons who have a disability or are treated as having a disability, due to widespread notion that homosexuality is a disease¹⁶. It is also an infringement of art. 5(2) of the CRPD, as the Polish state does not provide effective legal protection against discrimination of LGBT persons with disabilities, or LGBT persons perceived as having a disability, who have been discriminated against while accessing mental health services, or any other healthcare professional.

Recommendations:

1. To introduce legal regulations regarding providing health services of psychotherapy by Public Health Service and private entities
2. To introduce a legal regulations banning the so-called “conversion” or “reparative therapies”.

Questions:

4. What measures has the State taken to address the problem of conversion therapies?
5. What measures has the State taken to tackle the problem of widespread notion that homosexuality is a disease?
6. Is the State planning to introduce any legal regulations regarding provision of the psychotherapeutic services?

3. Independent living and community participation (Articles 5, 8, 12 & 19 of the CRPD Convention)

LGBT persons with disabilities often experience exclusion from the community: both LGBT community that rarely recognizes accessibility needs, and the disability community that often is unwelcoming for non-heterosexual or non-cisgender persons due to negative attitudes. Therefore, enjoying living independently and being included in the community (art. 19 of the CRPD) remains a substantial challenge for LGBT persons with disabilities. Many activities addressed to LGBT or disabled persons lack intersectional approach. Additionally, the very translation of CRPD fails to clearly refer to multiple discrimination. Although the CRPD Preamble contains explicit reference to “multiple discrimination”, the Polish translation does

not mention the term directly speaking about “often and widespread discrimination on other grounds” making it unclear in practical reference.

Moreover, what makes it difficult for many persons to enjoy community participation and independent living is the fact that Poland until now has not implemented integrated personal assistance (PA) system, and there are only NGOs who offer temporal PA services¹⁷. Lack of PA system influence LGBT persons with disabilities in an intersecting way as their independent living might be limited by the way of living accepted by the family who offers required everyday support.

It has to be highlighted that recent reports show that the majority of LGBT persons still do not experience acceptance from family members (parents, siblings)¹⁸. Therefore, due to the lack of integrated PA services, LGBT persons with disabilities are often dependent on family members who do not accept their identities, and such persons cannot enjoy their right to independent living.

“The ideal situation would be when our relatives would accept our sexual orientation, would respect our choices and our autonomy. It would be wonderful if we were supported to attend a meeting with our partners or LGBTQ community meetings. But according to me in most cases, non-heterosexual women with disabilities (intellectual, physical, sensory), who require assistance in everyday life, decide not to disclose their orientation to their relatives, because the consequences of coming out may drastically threaten the quality of their lives. They risk being not accepted, losing assistance in everyday activities, exclusion from their communities or facing a ban on integrating with LGBTQ community. And when we do come out we encounter architectural barriers. They make it difficult to go out from our homes, use public transport or reach a club or a meeting of LGBTQ community. Often we can’t even reach the information about these meetings as web pages are inaccessible. Even if we find information then we lack information on whether or not the building is accessible, whether or not we can get assistance, whether or not there would be a sign language interpretation.”
[Viktoria]¹⁹

Independent living is also restricted by the institution of incapacitation. It is important to highlight that Poland maintains incapacitation as a tool for support in exercising legal capacity which does not comply with the article 12 of the CRPD (“Equal recognition before the law”)²⁰. Moreover, an increase in the number of persons under guardianship over a decades is observed (from 23.489 in 1985 to 74.005 in 2012).²¹

LGBT persons with disabilities may face consequences of incapacitation on the homophobic or transphobic grounds. For example, Poland does not recognize same-sex partnerships, and therefore the partners and (non-biological) children of LGBT persons are not recognized as their family members under the law. In consequence, if incapacitated, they might face separation from their chosen families.²²

In 2016, for example, incapacitation became a tool of both ableism and homophobia against a woman with disability living in a same-sex relationship, who was deprived of the possibility to be cared for by her life-long partner against her will as they are not recognized as family under current kinship law.

“We are the closest persons for each other, we love each other” says Teresa [...] Before the notary they granted each other financial powers, they trusted each other. One was taking care of infirm

parents of the other as the best daughter-in-law. [...] The District Court found it impossible. As pointed out Zofia “is single, childless. Her closest family is her niece.” In 2016 the Court incapacitated Zofia. [...] The advanced health condition of Zofia is undeniable. But is it already a reason to take a person out of their home and place in an institution? [...] If incapacitated person is married, the court somehow automatically most often grants guardianship to the spouse. [...] Zofia yet does not have a husband. She had lived with Teresa for 46 years. [...] The niece placed Zofia in a nursery house 400km from their home where Teresa was unwelcome.²³

Recommendations:

1. To implement integrated Personal Assistance services system.
2. To address actions with regard to intersectionality and multiple discrimination faced by persons with disabilities.
3. To replace incapacitation by supported decision-making system.

Questions:

4. When and how the State aims to introduce integrated Personal Assistance services?
5. What measures is the State implementing to ensure that persons with disabilities enjoy independent living?
6. When will the State replace incapacitation with the supported decision-making system?

4. Bias-motivated violence and hate speech (Articles 5, 6, 8, 9, 13, 14, 15, 16& 17 of the Convention)

There is a conclusive evidence that the scale of violence affecting people with disabilities in Poland is high. For example, one study conducted among persons with intellectual disabilities found that over nine in 10 respondents (92%) experienced some form of violence²⁴.

Research commissioned by the Ombudsman in 2016 found that people with disabilities, LGBT people and people with diverse national and ethnic background were targets of public insults/verbal abuse significantly more often than the control group.²⁵ According to the study, only 5% of the insults were reported. Among victims of crimes who had a disability, over eight in 10 (83%) felt that the crime they experienced was motivated by prejudice.

While the police case management system allows flagging crimes as motivated by bias based on disability, the number of recorded crimes in 2015 and 2016 was zero.²⁶ As the cases below show, even if disablist violence is reported to the police, the bias motivation is rarely identified.

Available civil society cases and media reports show that people with disabilities are exposed to a range of bias-motivated incidents. Examples include:

- In July 2015, in Warsaw, a gay man with Huntington disease was physically assaulted and verbally abused in his neighbourhood by two unknown perpetrators. One man slapped him in the face, and another man called him “faggot”, “queer”, a “junkie” and

“freak”. According to the victim, the attack was at least partially caused by the uncoordinated movements caused by the disease, which the perpetrators found “abnormal” and “freak-like”. The victim used emergency shelter for LGBT people offered by Lambda Warsaw.²⁷

- In January 2017, media reported that a 19-year old man with cerebral palsy was kidnapped, tortured and subsequently killed in December 2016 by a group of people who initially expected that they would receive ransom from the victim’s family. Failing that, the perpetrators robbed the victim, beat, kicked and suffocated him, causing death. In December 2017, the prosecution charged three suspects with aggravated murder. The bill of indictment mentioned disability as one of the motives of crime²⁸. Nevertheless, the case is not marked as a disability hate crime in the police statistics.
- In September 2017, media reported on a case in which a 26-year old woman with a learning disability was raped at a cemetery. The prosecutor discontinued the case arguing that there was no rape, as there was no evidence of resistance or violence. The alleged perpetrator testified as a witness in the case.²⁹

Considering its prevalence and mental health consequences, hate crime should be considered a major public health concern. The negative impacts of this kind of violence are well documented. For example, the study commissioned by the Ombudsman shows that the psychological and social consequences of bias-motivated crimes targeting people with disabilities, LGBT people and people with diverse national or ethnic background are more severe than consequences of comparable crimes committed without a bias motive.³⁰ In particular, hate crime victims significantly more often fulfill the criteria of a post-traumatic stress disorder.

Despite their prevalence and impact, hate crimes targeting people with disabilities and LGBT people are not recognized by the Polish criminal law. Moreover, some of the most prevalent disability and LGBT-phobic incidents (e.g. verbal and physical abuse, threatening behaviour) require that the victim make a private complaint / accusation, in which case the burden of prosecuting the case, including collecting evidence of the bias motivation, is on the victim. This is one of the main reasons of low reporting of hate crimes.

Hate speech targeting people with disabilities or LGBT people is not recognized as a crime by the Polish law.

Since 2007, numerous human rights monitoring and review bodies have been pointing out the gaps in the protection of people with disabilities and LGBT people from targeted violence and hate speech. For example, the CAT, the HRCtee, the HRC, the CRC, ECRI and ODIHR recommended that Poland amends its criminal law to legally define hate speech and hate crimes based on disability, sexual orientation or gender identity.³¹

The Polish government pledged to change the law in the framework of the UPR in 2012 and 2017³² and considered it in the National Action Plan on Equal Treatment 2013-2016³³. Bills aimed at recognizing hate crimes and hate speech based on disability, sexual orientation, gender identity, gender and age were submitted in the parliament in 2011, 2012, 2014 and 2016, usually by members of opposition parties. During the debates in the parliament, the MP presenting the stance of the now-ruling Law and Justice party claimed that hate crimes targeting people because of disability do not exist³⁴. The government issued negative opinions on all proposed amendments, and the works on the bills were discontinued or the bills were rejected.³⁵

There is no separate police procedure as to how to treat hate crime victims. The bias motivation of a crime or personal characteristics of a victim such as mental or physical disability, maturity, intellectual and emotional capacity, age, health, sexual orientation or gender identity are not specifically mentioned as reasons for which a victim might have specific protection and support needs.³⁶As a result, specific support and protection needs of hate crime victims or victims with disabilities are not routinely considered³⁷.For example, the information on the rights of victims is provided in the form of an excerpt of legal provisions, on a sheet of paper in a small print. The sheet does not provide victims with information about the specific support services available locally and accessible, e.g. to people with hearing or seeing impairments.

As of January 2018, the authors are not aware of any official works aimed at enhancing the legal protection or access to justice for hate crime victims.

Recommendations:

1. To recognize hate crime and hate speech based on disability, gender identity and sexual orientation in the Criminal Code;
2. To redouble efforts to detect and record all cases of hate crimes reported to the police;
3. To ensure that rights of hate crime victims are recognized in the criminal justice procedure and that publicly funded victim support services address the specific support and protection needs of hate crime victims.

Questions:

1. What is the government doing to fulfill its pledge to recognize hate crimes and hate speech based on disability, gender identity and sexual orientation in the Criminal Code, made at the Human Rights Council in 2012 and 2017, as well as by other bodies, including UN Committee against Torture, Committee on the Rights of the Child, and the Human Rights Committee? By when is the government planning to complete this task?

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¹⁴ List of statements and positions on conversion therapy:
<https://www.hrc.org/resources/policy-and-position-statements-on-conversion-therapy>

¹⁵ www.pomoc2002.pl

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Information about submitting organisations

Stowarzyszenie Strefa Wenus of Milo is non-governmental organization founded by and for women with disabilities. Strefa's activities are guided by the "Nothing about us without us" principle and are aiming at supporting the emancipation, autonomy, and independent living of women with disabilities. The main goals of the association are to defend the rights of girls and women with disabilities, to improve the quality of their lives and to counteract discrimination on the grounds of disability, gender and sexual orientation, religion (or lack of it), ethnic origin, age, education, economic status and others. Strefa leads educational activities and cooperates with organizations interested in counteracting intersectional discrimination and violence both locally and internationally.

Association Lambda Warsaw (LW) is the oldest LGBT rights organization in Poland (est. 1997) and the largest provider of support services to members of the LGBT community. Lambda's activities include, inter alia, providing legal and mental health support to victims of violence and discrimination based on sexual orientation or gender identity; conducting surveys, collecting cases and monitoring the legal and policy situation of LGBT people in Poland as well as conducting advocacy activities. Lambda is the co-leader of the transnational projects Come Forward and Call It Hate aimed at countering anti-LGBT hate crimes in Europe.

Culture of Equality Association is an LGBTQ organization located in Wroclaw mainly focused on cultural and educational events and integration of local queer community. It was established in 2012.

Autonomy Foundation is a nongovernmental, non partisan polish organisation funded in 2007. Our main goal is to stop discrimination and violence based on gender and sexual orientation through educational and other activities including popularisation of WenDo-Self-defence and Assertiveness for Women and Girls, elimination of stereotypes, empowerment of those who are discriminated against, marginalised, excluded; popularisation of human rights (especially women's and lesbian's rights as human rights) and equal status of men and women, development of democracy, civil society activation and co-operation between groups and individuals. FA is the only organisation in Poland that includes popularisation of WenDo-Self-defence and Assertiveness for Women and Girls as a violence prevention method in its statutory goals. FA's founders have been active WenDo trainers for 4 years.

Campaign Against Homophobia is nationwide polish LGBT organization established in 2001 which focuses on advocating for equal rights of LGBT persons. KPH's main activities encompass conducting political (cooperation with decision-makers), legal (strategic litigation) and social advocacy (mobilizing the communities to influence decision-makers); developing and implementing systemic educational solutions for key professional groups (i.a. teachers, medical staff, mental health professionals, police, prosecutors) and building a wide ally movement (encouraging and equipping groups of power, esp. heterosexual and cisgender, to make use of their social position to influence the lives of LGBT people and their families).

