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Poland and Latvia

Lesbian, Gay, Bisexual and Transgender Rights in Poland and Latvia



AI Index: EUR 01/019/2006

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1. Introduction

The lack of respect, protection and promotion of the human rights of lesbian, gay, bisexual and transgender (LGBT) persons is still an area for concern in several European Union (EU) countries. Amnesty International is concerned that in Poland, the rights to freedom of expression and assembly are not fully guaranteed, and that leading public figures have made homophobic statements. Amnesty International is also concerned that in Latvia, the rights to freedom of assembly and expression are not fully guaranteed.

As far back as 1999, the United Nations (UN) Human Rights Committee had expressed regret that the reference to sexual orientation which had originally been contained in the non-discrimination clause of the draft Polish Constitution had been deleted from the text.¹ In December 2004 the Committee expressed concern that in Poland “the right of sexual minorities not to be discriminated against is not fully recognized, and that discriminatory acts and attitudes against persons on the ground of sexual orientation are not adequately investigated and punished”. The Committee therefore made two recommendations: to provide appropriate training to law enforcement and judicial officials in order to sensitize them to the rights of sexual minorities, and to introduce a specific prohibition of discrimination on the ground of sexual orientation in Polish law².

Notwithstanding these recommendations, the situation of sexual minorities in Poland does not appear to have improved. This report documents violations of the rights to freedom of assembly and expression and homophobic statements by politicians and government officials, as well as discrimination in administrative decisions. Following Lech Kaczyński's election as President in October 2005, the European Commission issued a formal warning to Poland, saying that it could lose its European Union voting rights if the President continued to oppose LGBT rights³.

In 2005 and 2006, incidents have been reported in Poland in which demonstrators from the LGBT community and other activists have been attacked by counter-demonstrators, with the police failing to ensure that they were able to exercise their right to peaceful assembly. In 2005 a Gay Pride march in the Latvian capital, Riga, was eventually allowed to go ahead after an intervention by Riga Administrative Court, while the 2006 march was banned altogether owing to what the authorities have referred to as “security threats”. Both events had been interrupted by violent protests. In May 2006, the Council of Europe Commissioner on Human Rights, Thomas Hammarberg, re-enforced the Council of Europe's commitment to freedom of

¹ Human Rights Committee, Concluding observations: Poland, UN Doc. CCPR/C/79/Add.110, 29 July 1999, par. 23.

² Human Rights Committee, Concluding observations: Poland, UN Doc. CCPR/CO/82/POL, 2 December 2004, par. 18.

³ <http://www.guardian.co.uk/eu/story/0,7369,1599957,00.html>

assembly in a public statement with specific reference to LGBT marches in Council of Europe member states⁴.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has also reminded governments of their obligation to protect the security and the right to life of persons belonging to sexual minorities. He recommended that measures in this regard should include policies and programmes geared towards overcoming hatred and prejudice against homosexuals, and sensitizing public officials and the general public to crimes and acts of violence directed against members of sexual minorities⁵. In a resolution entitled "Homophobia in Europe" on 18 January 2006, the European Parliament called on member states "to ensure that LGBT people are protected from homophobic hate speech and violence"⁶.

Poland and Latvia are not the only countries in the EU, or in Europe as a whole, which do not fully comply with international law relating to LGBT rights. Indeed, several other countries have over the past few years showed a lack of commitment to LGBT rights. The fact that this briefing concentrates on Poland and Latvia is in no way any indication that LGBT persons do not face rights violations and abuses in other countries.

2. LGBT rights are human rights

All people, regardless of their sexual orientation or gender identity, should enjoy all human rights enshrined in the Universal Declaration on Human Rights.

Paul Hunt, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, noted in his 2004 report to the 60th session of the UN Commission of Human Rights that: "...sexuality is a characteristic of all human beings. It is a fundamental aspect of an individual's identity. It helps to define who a person is. The Special Rapporteur notes the abiding principles that have shaped international human rights law since 1945, including privacy, equality, and the integrity, autonomy, dignity and well-being of the individual. In these circumstances, the Special Rapporteur has no doubt that the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights. Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty or social interference"⁷.

International human rights law prohibits discrimination on any grounds, including sexual orientation. Article 26 of the International Covenant on Civil and Political Rights (ICCPR) provides that:

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<https://wcd.coe.int/ViewDoc.jsp?id=1010053&BackColorInternet=99B5AD&BackColorIntranet=FABF45&BackColorLogged=FFC679>

⁵ Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/2002/74, 9 January 2002, par. 148.

⁶ European Parliament, Resolution on Homophobia in Europe, P6_TA(2006)0018, 18 January 2006, par 2.

⁷ *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2004/49, 16 February 2004, para.54.*

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as... sex...”

The reference to “sex” in this Article is recognised as including “sexual orientation”⁸. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) also reiterates state obligations to protect an individual from discrimination on all grounds, including “sex”⁹. The Charter of Fundamental Rights of the European Union prohibits any discrimination based on any ground, including sexual orientation¹⁰. Article 6 of the Treaty on the European Union (TEU) establishes a general obligation for the EU member states to respect human rights and fundamental legal principles¹¹, which includes freedom of expression and association.

The principle of non-discrimination is a general principle of EU law, and is expressly mentioned in a number of distinct contexts in EU treaties. The Amsterdam Treaty¹² provided a new legal basis for this principle. Article 13 of the Treaty establishing the European Communities (TEC) reformed by the Amsterdam Treaty, allows EU action against discrimination on grounds of racial and ethnic origin, religion, disability, age and sexual orientation¹³. On the basis of Article 13 TEC, two directives on equal treatment have been adopted: the Race Equality Directive (2000/43/EC) of 29 June 2000¹⁴ and the Employment equality directive (2000/78/EC) of 27 November 2000¹⁵. The latter, which requires member states to take specific measures to ensure non-discrimination of persons in the limited area of employment and occupation, covers several grounds of discrimination, including grounds of religion or belief, disability, age or sexual orientation.

The EU Charter of Fundamental Rights (EUCFR) which was proclaimed in December 2000, was a further step forward in the protection of the principle of non-discrimination. Article 21(1) of the EUCFR provides the right to non-discrimination and sets a non-exclusive broader list of non-discrimination grounds. According to Article 21(1) of the EUCFR: “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic

⁸ *UN Human Rights Committee, Toonen v Australia, Communication No.488/1992: Australia, CCPR/C/50/D/488/1992, 4 April 1994, par. 8.7.*

⁹ *Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.*

¹⁰ *Article 21, Charter of Fundamental Rights of the European Union (2000/C 364/01), 18 December 2000, Official Journal of the European Communities C 364/1.*

¹¹ Article 6 TUE: “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”

¹² The Treaty of Amsterdam came into force on 1 May 1999.

¹³ Article 13 (1) states: “Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

¹⁴ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The Directive lays a general framework for non-discrimination in the EU on grounds of racial or ethnic origin.

¹⁵ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”

Harassing or discriminating against people because of their role in defending the human rights of LGBT persons is also a violation of human rights. Members of LGBT organizations, working to protect people from abuses and discrimination because of their sexual orientation and/or gender identity should be able to carry out their work without fear or harassment.

2.1. The legal framework: The rights to freedom of expression, assembly and association

The rights to freedom of expression, peaceful assembly and association are recognized in numerous human rights treaties including the ICCPR and the ECHR, to which Latvia and Poland are both state parties¹⁶. In the European context, the EU and the Organisation for Co-operation and Security in Europe (OSCE), have also recognised these rights, respectively in Article 12(1) of the EU Charter of Fundamental Rights¹⁷, and in Article 9(2) of the Document

¹⁶ Article 21 of the ICCPR states that “the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.

Article 11 of the ECHR states that “1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

Article 19 of the ICCPR states that “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”

Article 10 of the ECHR states that “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

¹⁷ Art. 12.1 of the Charter of Fundamental Rights of the European states that “Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade

of the Copenhagen Meeting of the Human Dimension of the Conference on Security and Co-operation in Europe¹⁸.

Although the rights of freedom of expression, peaceful assembly and association are not absolute rights, any interference with these rights has to be prescribed by law, necessary and proportionate to meet a legitimate aim under international law. According to international human rights law, freedom of expression, peaceful assembly and association should not be restricted or prohibited simply on the grounds that something might shock, offend or disturb. Therefore, a peaceful assembly may not be restricted merely on the grounds that it might offend an individual or group. Moreover, states have an obligation to protect the right to peaceful assembly even if a peaceful gathering may attract violent counter-demonstrations. In other words, whilst a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote, the participants must be able to hold the demonstration without having to fear that they will be subjected to physical violence by persons or groups opposed to their ideas.

The European Court of Human Rights (ECtHR) has developed jurisprudence regarding restrictions to the right to assembly and the right to freedom of expression. In its 1985 ruling on *Plattform Ärzte für das Leben v. Austria*, the ECtHR ruled that “a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold a demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.” The ECtHR has also held that states have a positive duty to protect the right to freedom of assembly by stating that “genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the state not to interfere: a purely negative conception would not be compatible with the object of Article 11 of the ECHR. Like article 8, Article 11 sometimes requires positive measures to be taken.” This principle is re-affirmed in the *Stankov and the Macedonian Organisation Ilinden v. Bulgaria* ruling from 2001 which states that “the authorities were therefore bound to take adequate measures to prevent violent acts directed against the participants in Ilinden’s rally, or at least limit their extent. However, it seems that they...[...]...failed to discharge their positive obligations under article 11.”

union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.”

¹⁸ Art. 9.2 of the Document of the Copenhagen Meeting of the Human Dimension of the CSCE, 29 July 1990 states that “everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.”

3. Poland

3.1. Homophobic statements by leading public officials

“If a person tries to infect others with their homosexuality, then the state must intervene in this violation of freedom.” *Kazimierz Marcinkiewicz, then Prime Minister, 3 October 2005*

“If deviants begin to demonstrate, they should be hit with batons.” *Wojciech Wierzejski, Deputy of the Sejm (Polish National Assembly), 11 May 2006.*

“Homosexual practices lead to drama, emptiness and degeneracy.” *Teresa Łecka, new director of the National In-Service Teacher Training Centre, 9 October 2006.*

Amnesty International is concerned about the openly homophobic statements made by a prime minister, prominent politicians and public officials, including, in at least one instance, an encouragement to use violence against peaceful LGBT rights demonstrators. A climate of discrimination and intimidation has been partly perpetuated by such statements.

Counter-demonstrators during Toruń Equality Parade

Photo with permission of KPH Toruń

The September 2005 general election and the presidential election in October that year led to a change of government with the Law and Justice Party (Prawo i Sprawiedliwość, PiS) coming to power. To secure power, in May 2006, the PiS formed a coalition government with the League of Polish Families (Liga Polskich Rodzin, LPR) and Self-Defense (Samoobrona) party. Both before and after the elections, political figures were reported to have made openly homophobic statements and comments.

Before the elections, for example, the PiS had criticized LGBT rights campaigners. In early 2005, Kazimierz Michał Ujazdowski of the PiS, currently the Minister of Culture, said:

"Let's not be misled by the brutal propaganda of homosexuals' postures of tolerance. It is a kind of madness, and for that madness, our rule will indeed be for them a dark night"¹⁹.

In June 2005, Wojciech Wierzejski, who was then a Member of the European Parliament and of the LPR, called for "no tolerance for homosexuals and deviants"²⁰.

In October 2005, the then Prime Minister, Kazimierz Marcinkiewicz was reported as saying that homosexuality was "unnatural" and that if a person "tries to infect others with their homosexuality, then the state must intervene in this violation of freedom"²¹.

During the presidential campaign of October 2005, one of the then candidates, Lech Kaczyński, who later became President of the Republic of Poland, said that he would continue to ban LGBT demonstrations, as "public promotion of homosexuality will not be allowed"²².

One of the first decisions of the new government was to abolish the Plenipotentiary for Equal Gender Status, whose creation had welcomed by the UN Human Rights Committee²³, making Poland the only EU country without a statutory equality watchdog.

On 12 May 2006, Wojciech Wierzejski, a national parliamentarian of the LPR at that time, stated in a letter addressed to the Minister of Interior and Administration Ludwik Dorn and the Minister of Justice Zbigniew Ziobro that the law enforcement authorities should check what he called "legal and illegal sources of financing" of organizations of homosexual activists and demanded the State Prosecutor's intervention. The letter also accused LGBT organizations of being involved with paedophiles and the illegal drug-trade. Wojciech Wierzejski also wrote that he wished to check if LGBT organizations "penetrate Polish schools". Following his demand, the State Prosecutor ordered, in a letter issued on 30 May 2006 to all prosecutors that they check very carefully the ways of financing of LGBT organizations, their alleged connections to criminal movements and their presence in schools²⁴.

Wojciech Wierzejski had on 11 May 2006, encouraged the use of force should LGBT rights activists organize their annual Equality March in Warsaw in June. "If deviants begin to demonstrate, they should be hit with batons"²⁵, Wojciech Wierzejski said at that time. He commented on the possible attendance of politicians from western Europe at the march by saying "they are not serious politicians, but just gays and a couple of baton strikes will deter them from coming again. Gays are cowards by definition"²⁶.

On 19 May 2006, Mirosław Orzechowski, Deputy Minister of Education and also belonging to the LPR, stated that an international project that was organized by several LGBT rights non-governmental organizations (NGOs) and financially supported by the European

¹⁹ During a meeting in Toruń: http://www.ilga-europe.org/europe/guide/country_by_country/poland/appeal_on_the_international_day_of_tolerance

²⁰ <http://www.globalgayz.com/poland-news05.html> from Polskie Radio, <http://www.radio.com.pl/>

²¹ http://direland.typepad.com/direland/2005/10/poland_turns_ha.html

²² http://education.independent.co.uk/careers_advice/article1117292.ece *Op. cit.* (23).

²³ Human Rights Committee, Concluding observations: Poland, UN Doc. CCPR/CO/82/POL, 2 December 2004, par. 5.

²⁴ *Gazeta Wyborcza*, 1 June 2006.

²⁵ *Gazeta Wyborcza*, 11 May 2006..

²⁶ <http://www.freerepublic.com/focus/f-news/1633328/posts>

Commission Youth Programme²⁷, would lead to the “depravity of young people”. The Deputy Minister also said that “the rules and priorities of the programme under which such projects get money, need to be changed in order to prevent such organizations from receiving money in the future”²⁸.

On 21 May 2006, Roman Giertych, Deputy Prime Minister, Minister of Education and also leader of the LPR said on TVN (a Polish private TV channel) that “LGBT organizations are sending transsexuals to kindergartens and asking children to change their sex.”

Despite the fact that the Equality March in Warsaw on 10 June 2006 was able to proceed in the end without major incidents, this positive step has not been part of a larger move towards greater tolerance. During July and August more homophobic declarations came from public officials. Miroslaw Kochalski, a spokesman for the mayor of Warsaw, was quoted on 5 July as saying that the march was “immoral and a danger to the inhabitants of Warsaw.”²⁹

On 7 August 2006 Paweł Zyzak, editor in chief of a PiS magazine, *Right Turn!*, wrote that gays are “animals” and were “the emissaries of Satan sent to destroy the Catholic Church.”³⁰ Around the same time, in the city of Koscierzyna, a leading PiS member of parliament who is also a member of the party’s governing council, Waldemar Bonkowski, placed a large banner on the wall of the local party headquarters. “Today it’s gays and lesbians -- what’s next, zoophilia? Is that liberty and democracy? No, that’s syphilisation! Our Polish pope [the late John Paul II] is looking down from the sky and asking, Whither goest thou, Poland?” the banner read³¹.

Complaints about homophobic statements have been dismissed by judicial authorities. On 2 June 2006 it was revealed that a complaint about the statements of Wojciech Wierzejski had been rejected by the Warsaw district prosecutor, because according to him “the statements cannot be treated as threatening or encouraging to crime.”

The new Prime Minister Jarosław Kaczyński did not acknowledge this climate of intolerance towards LGBT people in Poland when, during his visit to the European Commission on 30 August, he said that “people with such [homosexual] preferences have full rights in Poland, there is no tradition in Poland of persecuting such people” and he asked the President of the European Commission, Jose Manuel Barroso “not to believe in the myth of Poland as an anti-Semitic, homophobic and xenophobic country”³².

²⁷ The project, called “Do we need gender?” was organized by: the Campaign Against Homophobia (Kampania Przeciw Homofobii, KPH, Poland), co-organized by Bulgarian Gay Organization Gemini (Bulgaria), Diversity (Estonia), and Bost Axola (Spain).

²⁸ <http://www.icare.to/news.php?en/2006-06>

²⁹ http://gejowo.pl/index.php?pid=3&n_id=7588

³⁰ http://gejowo.pl/index.php?pid=3&n_id=7666

³¹ http://gejowo.pl/index.php?pid=3&n_id=7668

³² <http://www.warsawvoice.pl/view/12686>

3.2. Discrimination by the Ministry of Education

Amnesty International is concerned by discriminatory acts from the Ministry of Education that violate Poland's obligations³³ against non discrimination under Article 2 and Article 26 of the ICCPR³⁴; on the aims of education under the Article 29 (1) of the Convention on the Rights of the Child (CRC)³⁵; and on the right to education under the Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁶.

On 8 June 2006 Roman Giertych, as Minister of Education, dismissed Miroslaw Sielatycki, the director of the National In-Service Teacher Training Centre (Centralnego Ośrodka Doskonalenia Nauczycieli, CODN)³⁷. The reason the minister gave for the dismissal was that "a lot of books there were encouraging teachers to organize meetings with LGBT non-governmental organizations such as Campaign Against Homophobia (Kampania Przeciw Homofobii, KPH) or Lambda"³⁸. Minister Giertych added that "these books were criticizing the legal situation in most of European countries, including Poland, in relation to non-recognition of 'gay marriage' as being a form of discrimination"³⁹. He also mentioned the possibility of closing or reorganizing the CODN.

The dismissed director of the CODN said that the only book he was aware of in the context of Minister Giertych's accusations was the Polish version of the *Compass*, a Council

³³ Poland ratified the ICCPR and the ICESCR both on 18 March 1977 and the CRC on 7 June 1991.

³⁴ Art. 2 ICCPR obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Art. 26 ICCPR not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, according to the General Comment of the Human Rights Committee No. 18 on Non-discrimination (10/11/89) therefore this notion would imply that Poland should put in place legislation prohibiting discrimination, including in connection to the right to work - i.e. legislation protecting employment and prohibiting termination of employment on discriminatory grounds.

³⁵ Art. 29.1.b CRC establishes that the education of the child shall be directed to the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations which includes non discrimination. According to the General Comment of the Committee on the Rights on the Child about the aims to education in its par. 15 "Human rights education should provide information on the content of human rights treaties [and] children should also learn about human rights by seeing human rights standards implemented in practice, whether at home, in school, or within the community."

³⁶ Art. 13.1 ICESCR shows the agreement of the State parties that "education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups. According to the General Comment of the Committee on Economic, Social and Cultural Rights par. 1 "education is both a human right in itself and an indispensable means of realizing other human rights."

³⁷ The National In-Service Teacher Training Center (CODN) is a state-funded agency of the Ministry of National Education and Sport. Its mission is to support the development of a national system of teacher training in line with state educational policies.

³⁸ http://dziennik.pap.com.pl/index.html?dzial=OSW&poddzial=POL&id_depeszy=19182236

³⁹ *Ibidem*.

of Europe's anti-discrimination handbook and a manual on human rights for young people. Reacting to these events Terry Davis, the Secretary General of the Council of Europe, of which Poland is a member, stated that "the Polish government is free to decide whether it wishes to use Council of Europe's material for human rights education, but if the teaching material is optional, the values and principles contained therein are certainly not."⁴⁰ Terry Davis claimed that the handbook reflects basic European values, including the culture of tolerance, and that education plays a key role in that: "*Compass* is a very valuable tool for teachers who educate young people in the field of human rights"⁴¹. He also expressed concern about "some politics promoting homophobia (...) and homophobic behaviours being accepted by the Government"⁴².

In spite of those reactions, the new director of the CODN, Teresa Łecka, stated on 9 October 2006 that "active homosexuality is contrary to human nature". When asked whether it was appropriate to discuss homosexuality at schools she was reported to have responded that "improper patterns must not be present at schools, because the objective of the school is to explain the difference between good and evil, beauty and ugliness (...) school has to explain that homosexual practices lead to drama, emptiness and degeneracy"⁴³.

On 26 September, a project submitted by KPH to the National Agency of Youth Programme within the framework of the European Voluntary Service and the European Youth Programme was rejected by the Polish Selection Committee of the Ministry of Education. KPH was the only applicant to receive a response on 26 September 2006, all other applicants having received a timely response by 4 August thus enabling them to start work swiftly on their proposed projects. KPH was forced to wait - and was then rejected. The reason given was "that the policy of the Ministry does not support actions that aim to propagate homosexual behaviour and such attitude among young people. Also, the role of Ministry is not to support cooperation of homosexual organizations."⁴⁴

3.3. Undermining freedom of assembly

"Gas the queers" member of National Rebirth of Poland's (Narodowe Odrodzenie Polski) counter-demonstration during the 2006 Equality March in Toruń

Apart from the statements by politicians and public officials, there have been reported incidents in which demonstrators from the LGBT community and other activists have been

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<https://wcd.coe.int/ViewDoc.jsp?id=1009513&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>

⁴¹ *Ibidem.*

⁴² *Ibidem.*

⁴³ <http://serwisy.gazeta.pl/edukacja/1,51805,3672288.html>

⁴⁴ http://www.ilga-europe.org/europe/guide/country_by_country/poland/poland_rejects_gay_project

attacked by private individuals (non-state actors), including counter-demonstrators, together with allegations that the police have failed to ensure that the LGBT demonstrators have been able to exercise their right to peaceful assembly. Below are reports of recent incidents which highlight Amnesty International's concerns.

On 15 November 2005, the mayor of the city of Poznań, Ryszard Grobelny, banned a public event known as the Equality March which had been organized by a number of Polish feminist and LGBT organizations and was set to take place on 19 November. According to the organizers, the Equality March was intended to provide a platform for discussion about tolerance, anti-discrimination and respect for the rights of LGBT people. The mayor issued the banning order due to "security concerns" and an alleged "threat to the Poznań residents" even though it was reported that security issues had already been agreed between the municipality and the Equality March organizers.⁴⁵

Despite the ban, a few hundred people gathered together on 19 November for a demonstration. They were reportedly harassed and intimidated by members of a right-wing grouping known as All Polish Youth (*Młodzież Wszechpolska*), who allegedly shouted "Let's gas the fags" and "We'll do to you what Hitler did with Jews". The police dispersed the march after one hour and arrested and interrogated over 65 people, most of them LGBT marchers, who were later released after being charged. As a protest against the dispersal of the march, demonstrations in support of tolerance and equality took place throughout Poland on 27 November.

That same month the Commissioner for Civil Rights Protection (the Polish Ombudsman) together with LGBT and feminist organizations and the Helsinki Foundation, a human rights NGO, appealed in court against the decision of the Mayor of Poznań. In their complaint, the appellants raised the argument that the real source of danger to the maintenance of security was the opponents to the LGBT demonstration, not the proposed peaceful march, and that the mayor's decision violated the right to freedom of assembly. In December 2005, the Regional Administrative Court (*Wojewodzki Sąd Administracyjny*) in Poznań ruled that the threat from a counter-demonstration could not be a reason for banning the demonstration. After the court decided that the banning of the march was illegal, the police decided to drop the charges against the LGBT marchers. The Mayor of Poznań appealed to the Poland's Supreme Administrative Court (*Naczelny Sąd Administracyjny*, NSA) in Warsaw which on 25 May 2006 upheld the decision of the Poznań Court. The ruling by the Supreme Administrative Court in Warsaw is final.

This Supreme Court decision clarified the legal situation around the Equality March in Warsaw arranged for 10 June 2006, about which there had been uncertainty until then. Shortly after that ruling, on 1 June 2006, the City Council of Warsaw authorized the Equality March. Owing to threats of counter-demonstrations, the organizers of the Equality March agreed a different itinerary with the Warsaw City Council. The counter-demonstrations were cancelled on 9 June 2006, following a request from Roman Giertych, Deputy Prime Minister and leader of the LPR, to the organizers asking them not to attend. Despite the cancellation, some people staged an unauthorized counter-demonstration, which the police separated from the Equality March.

The police provided extra forces (around 2,000 policemen from all over the country) to guarantee the security of the Equality March demonstration and ensure that the

⁴⁵ <http://www.neww.org.pl/en.php/news/news/2.html?&nw=1809&re=3>

participants (2,500 to 10,000 according to different sources) were able to exercise their right to peaceful assembly. The demonstration passed with only minor incidents reported.

However, the events in Poznań were not a one-off event, but part of a series of bans at that time on events by the LGBT community. The Equality March in Poznań in November 2004 had been interrupted when the police failed to provide protection to demonstrators from the members of the All Polish Youth who blocked the event; the Equality Parades in the capital, Warsaw, in June 2004 and again May 2005, were banned.

When he refused for the second year running to authorize the Equality Parade in Warsaw in May 2005, the then mayor of the city, Lech Kaczyński of the PiS – who was later elected the President of Poland – held that such an event would be “sexually obscene”⁴⁶ and offensive to other people’s religious feelings. The improvised parade still took place on 10 June, gathering more than 2,500 participants. Less than a week after that, the mayor authorized the so-called ‘normality’ parade, during which members of the All Polish Youth reportedly demonstrated on the streets of Warsaw and shouted intolerant and homophobic slogans. In September 2005, a Warsaw court ruled that the mayor’s decision to ban the Equality Parade was illegal⁴⁷. In January 2006, Poland’s Constitutional Court confirmed the ruling of the Warsaw Court and declared that demonstrators need only to inform city officials that a public demonstration would be taking place⁴⁸.

Counter-demonstrators during Toruń Equality Parade

Photo with permission of KPH Toruń

On 28 April 2006, a Tolerance March in the city of Kraków was attacked by members of a counter-demonstration called the Tradition March. The Tolerance March was organized to promote tolerance within Polish society and more than 1,000 people reportedly took part. Despite the presence of the police, the participants were reportedly harassed and intimidated by members of All Polish Youth. The Tolerance March changed its route to avoid a clash, but some members of the Tradition March ran after it, hurling stones and eggs. Police officers present reportedly failed to prevent them from doing so.

On 17 May 2006, in Toruń, KPH organized a public meeting in the Market Square linked to the International Day Against Homophobia. On the same day, Socialist Youth (the youth wing of the Socialist Party) organized a demonstration through the town against the new Education Minister Roman Giertych. Members of National Rebirth of Poland (Narodowe Odrodzenie Polski, NOP), a nationalist organization, held a counter-demonstration at the same place and time as the KPH. The chanting of slogans by NOP members, such as “gas the queers” (pedaly do gazu), “come closer” (chodźcie bliżej) or “there will be a baton for each queer face” (znajdzie się kij na pedalski ryj), could be heard easily at the other end of the square. At the Main Square, a municipal police unit was positioned to separate LGBT rights activists from the counter-demonstrators of NOP. The anti-Giertych march arrived there and

⁴⁶ <http://www.statewatch.org/swbul.html>

⁴⁷ *Poland: LGBT rights under attack* (AI Index: EUR 01/012/2005), 25/11/2005.

⁴⁸ <http://www.lifesite.net/ldn/2006/jun/06060507.html>

joined the LGBT rights activists on the square, forming one pro-tolerance demonstration, which later moved in the direction of the Education Office. On a square nearby, some of the pro-tolerance marchers were physically attacked. Police arrested four people suspected of the most serious attacks, but released them without charge later that day.⁴⁹

Also on 17 May 2006, a concert in Warsaw against homophobia and neo-fascism was disrupted by alleged neo-fascist extremists who were covering their faces.⁵⁰

“We’ll do to you what Hitler did with Jews” members of *All Polish Youth (Młodzież Wszechpolska)* counter-demonstrating during 2005 Poznań Equality March.

⁴⁹ Interview with members of KPH Toruń

⁵⁰ <http://www.pl.indymedia.org/pl/2006/05/20580.shtml?comments=true>

4. Latvia

4.1. Freedom of assembly and expression

In 2005 and 2006, Latvia saw its first two Gay Pride events in the capital, Riga. Planned marches in both years were banned owing to what the authorities referred to as “security threats”. The 2005 Gay Pride march was eventually allowed to go ahead after an intervention by Riga Administrative Court, while the 2006 march was banned altogether. The 2005 march, and events in 2006, were interrupted by violent protests

4.1.1. Gay Pride march 2005

On 20 July 2005, the executive director of the Riga City Council, Eriks Skapars, withdrew permission for the gay and lesbian community to hold a Gay Pride march on 23 July 2005. His decision came after a statement in a television interview by Latvia's Prime Minister, Aigars Kalvītis, that he could not “accept that a parade of sexual minorities takes place in the middle of our capital city next to the Dom Cathedral. This is not acceptable. Latvia is a state based on Christian values. We cannot advertise things which are not acceptable to the majority of our society.”

On 19 July 2005, the deputy speaker of the Latvian parliament, Leopolds Ozoliņš, had issued an open letter regarding the Gay Pride march in which he used highly offensive homophobic language about gays and lesbians, including referring to gay men as “shit stirrers”. Leopolds Ozoliņš also made highly critical remarks regarding the European Union’s “open and accepting attitude” towards gay and lesbian persons.

The organisers of the march subsequently made an official complaint to the Riga Administrative Court regarding the decision to ban the march. On 22 July 2005, the Administrative Court decided to annul Eriks Skapars’ decision to withdraw the permission for the march to take place. On 23 July 2005, the march went ahead as originally planned.

Organisers and news media covering the event estimated that approximately 300 people participated in the march. Meanwhile, over 1,000 persons had gathered to stage a protest against the march. Some of the protesters tried to block the march, while others used teargas and threw eggs at the marchers. The Latvian law enforcement officials managed to protect the marchers. In total, six of those who were protesting against the march were arrested.

Following the march, Amnesty International expressed its concern regarding the comments made by the Prime Minister and by the deputy speaker of the parliament and the fact that these comments may have incited violence against marchers.⁵¹ The organisation feared such comments from the authorities may encourage a climate of intolerance and

⁵¹ See Latvia: Leading politicians make remarks which may have incited to verbal and physical attacks (AI Index: EUR 52/001/2005) 25/07/2006.

hatred, and that they may have incited the verbal and physical attacks against gay and lesbian persons on 23 July 2005 during the Gay Pride march.

4.1.2. Gay Pride march 2006

“They say they promote family values – throwing excrement in plastic bags, is that ‘family values’?” Linda Freimane, one of the Riga Pride 2006 organisers, regarding the counter-demonstrators. 24 July 2006

Counter-demonstrators in Riga. From: www.gayrussia.ru

On 19 July 2006, Riga City Council announced it would not permit the “Riga Pride 2006” march to take place. Riga City Council said its decision was based on information it had allegedly received concerning several threats of violence against march participants if the march was allowed to go ahead, and that the police could not guarantee security and order during the march. The nature of the threats the authorities had received has as of yet not been disclosed. On 21 July, the Riga Administrative Court confirmed Riga City Council’s decision not to permit the march to go ahead.

On 22 July, those attending a church service in Riga, held in support of Riga Pride 2006, were attacked by a large group of people who threw, among other things, eggs and human excrement at them as they left the church. Despite requests by those organising the church service, no law enforcement officials were present to protect the worshippers.

Following a press conference organized by the Riga Pride 2006 organizers on 22 July 2006 at a hotel in central Riga, the majority of those attending were prevented from exiting the hotel by a group of up to 100 anti-LGBT protesters. The protesters attacked anyone trying to leave the hotel with amongst other things water, flour, eggs and human excrement. Those prevented from leaving the hotel included Riga Pride 2006 organizers, journalists, a Member of the European Parliament (MEP) and members of national parliaments (MPs) from around Europe. The organizers of the march had requested police protection for the press conference several days before the event, yet no significant police presence materialised until two hours after the attacks started.

Under international and European law, Latvia is not only obliged to respect the rights to freedom of assembly and expression, but also has a positive duty to take active measures to protect participants in events such as these from attacks against them.

“I am speechless, this is completely grotesque!” Linda Freimane’s, one of the Riga Pride 2006 organisers, reaction to the violence and the inactivity of the police immediately after the events.

Gay Pride marcher confronted with counter-demonstrator

From Apollo.lv

5. Recommendations

5.1. General

Everyone is entitled to protection against violence or threat without discrimination on any grounds. Amnesty International recommends that the police and judicial authorities act with due diligence to protect LGBT people against violence from the wider community. The authorities should also make clear that such violence is a criminal offence and will not be tolerated. Specific directives and training should be given to law enforcement officials on their duty to protect the human rights of all individuals, regardless of their sexual orientation, and on how to identify and investigate homophobic crimes.

5.2. Recommendations to the European Union institutions

Amnesty International recommends:

- The European Commission to take concrete steps to monitor not only the transposition but also the implementation of EU standards against discrimination and to press EU Member States to adhere to their commitments to combat all forms of discrimination, including discrimination on grounds of sexual orientation;
- The Finnish EU Presidency and the upcoming German EU Presidency to continue to work on the European Commission's proposed Framework Decision on combating racism and xenophobia; and, together with the Commission and the European parliament, to initiate a reflection on a possible broader instrument to address all forms of hate speech, covering all grounds of discrimination that are outlined in Article 13 of the EC Treaty (TEC);
- The EU Commission, the Finnish EU Presidency, and the upcoming German EU Presidency to support the right to freedom of assembly, including the Gay Pride marches and similar events in all EU member states and to take active steps to promote human rights, tolerance and the fight against discrimination in all EU member states, in particular in the context of the upcoming European campaign year 2007 "European Year of Equal Opportunities";
- The EU to ensure that the development of police cooperation in Europe includes the need for training of law enforcement officials on how to address homophobic violence and protect the rights of the LGBT community.

5.3. Recommendations to the Polish authorities

5.3.1. Regarding homophobic speech

- Ensure that no one in authority makes any public statement or order which could reasonably be interpreted as a licence to discriminate against or otherwise target any individual because of their sexual orientation or gender identity.

5.3.2. Regarding freedom of assembly

- Ensure that all individuals within their jurisdiction are able to effectively exercise their right to freedom of peaceful assembly without discrimination;
- Ensure that the rights to freedom of expression, association and assembly without discrimination are actively promoted by public officials at all levels;
- Ensure that the police have sufficient resources and training to take effective steps to protect the right to freedom of peaceful assembly.

5.3.3. Regarding violence

- Ensure that thorough and impartial investigations are carried out into attacks and threats against individuals because of their sexual orientation or gender identity and that anyone reasonably suspected of a crime in this regard be prosecuted in line with international human rights law and standards;
- Publicly condemn attacks, threats of attacks and other harassment of LGBT people, making clear that such violence is a criminal offence and will not be tolerated;
- Act with due diligence to provide effective protection to LGBT people who face threats to their lives and safety.

5.3.4. Regarding discrimination

- Ensure that funding policies are consistent and non-discriminatory towards civil society, including NGOs;
- Ensure that decisions which are against Poland's international commitments on non-discrimination will not be repeated in the future;
- Provide training to all public officials on Poland's international law obligations to prevent and investigate human rights violations and abuses, whatever the identity of the victim;
- Ensure that all Polish anti-discrimination legislation explicitly includes prohibition of discrimination on the grounds of sexual orientation or gender identity or expression;

- Ratify Protocol No. 12 to the ECHR on general prohibition of discrimination;
- Re-establish the position of the Plenipotentiary for Equal Gender Status;
- Ensure that measures to fight discrimination on the grounds of sexual orientation or gender identity or expression are included in the national action Plan drafted in the context of the EU 2007 Year of Equal Opportunities.

5.4. Recommendations to the Latvian authorities

Amnesty International recommends that:

- Latvian law enforcement agencies act under all circumstances with due diligence to protect LGBT people against violence from the wider community;
- The authorities also make clear that such violence is a criminal offence and will be prosecuted as such;
- Specific directives and training be given to law enforcement officials on their duty to protect the human rights of all individuals, regardless of their sexual orientation or gender identity or expression, and on how to identify and investigate homophobic crimes;
- Ensure that measures to fight discrimination on the grounds of sexual orientation or gender identity or expression are included in the national action Plan drafted in the context of the EU 2007 Year of Equal Opportunities.