

3rd CYCLE - UNIVERSAL PERIODIC REVIEW- POLAND- UPR 2016 – ADVOCACY SHEET

Brief Assessment of the Implementation of the 2nd Cycle UPR Recommendations

In 2012, during the UPR Cycle 2, Poland received 8 recommendations focusing on LGBT* issues. Poland accepted 6 of these recommendations (e.g. hate crime laws, policies and laws safeguarding from discrimination, full enjoyment of rights, etc.), while 2 recommendations were noted.

Challenges

1. Right to privacy

a) Polish citizens who try to get a civil partnership or marriage abroad with a same-sex partner encounter barriers when requesting a civil status certificate. When the civil servant identifies that name/surname of the future spouse has the same-sex as the applicant, in some cases they refuse the civil status certificate. Polish legislators decided to amend the law on civil status. The new law (came into force on 01.03.2015) and enables to obtain civil marital status in two forms, according to art. 49, a civil marital status not specifying the purpose of its usage and art. 83 certificate obtained to confirm applicants’ legal entitlement to get marriage abroad. When applying for the civil marital status according to art. 83, the applicant should specify the name, surname and sex of applicant and the future spouse. In the case that the sex of the applicant and the future spouse are the same, they refuse to issue the certificate.

b) Several discriminatory practices have been observed regarding attempts of Polish citizens in same sex marriages/civil partnerships to obtain a birth certificate for children born outside of Poland. Parents are refused the child’s birth certificate’s transcription into the Polish birth registry. The reasoning of the refusal is the fact that the parents are the same-sex. The lack of transcription of birth certificate makes it impossible to obtain Polish citizenship.

2. Hate crimes

During the 2nd cycle of UPR in 2012, Poland accepted the following recommendation **‘to include sexual orientation and gender identity in the hate speech provisions’ (90.66 Slovenia)** and **to recognize gender identity and sexual orientation as aggravating circumstances for hate crime (90.68 UK)**. **These recommendations have not been implemented.** Between 2012 and 2015, three such draft amendments were discussed in the parliament. None of the legislative initiatives led to the amendment of the Polish Criminal Code. Jarosław Kaczyński, the leader of the political party which has the majority of votes in the Polish Parliament pointed out (in his speech on 2nd May 2016)¹ that his party does not intend to introduce such provisions. His declaration was later confirmed by the Minister of Justice who - in his reply to the human rights defender - declared that he sees no need to bring such changes to the Criminal Code².

3. Equal treatment under the law

One of the most significant steps in enhancing the protection against discrimination in Poland was the adoption of the Act of 3 December 2010 Implementing Certain European Union Provisions on Equal Treatment (Equal Treatment Act). The Act provides definitions of different forms of discrimination but does not treat all vulnerable groups equally. This results in hierarchy of protection where the least protected grounds are sexual orientation, age, disability and religion with no right to equality in the field of education, health care, access to goods & services and housing³.

¹<http://bit.ly/2kiFfBg>

²<http://bit.ly/2k87v7N>

³ The act provides protection from discrimination in different areas, for example in access to housing protection is only on ground of race, nationality, in education its the same. In almost all areas few grounds are not protected incl. Sexual orientation and gender identity.

4. Education

There are no policies and standards, which would ensure equal treatment and safety of LGBTI persons in schools in Poland. Many schools even deny the existence of LGBTI students. Students who complain about homophobia at school often turn to Campaign Against Homophobia (KPH) and other LGBTI NGO’s. They experience homophobic behaviour, not only from other students but also from teachers, educators, and especially priests, nuns and catechists who teach religion. Moreover, the teachers, who admitted being non-heterosexual, become themselves victims of discrimination. Currently the Ministry of Education is unwilling to cooperate with civil society organizations representing LGBTI community due to lack of response to calls for a meeting issued by the Coalition of Anti-discriminatory Education co-chaired by KPH. There is a lack of legal provisions that mention sexual orientation or gender identity as a possible discrimination ground in the formal education system.

5. Legal gender recognition

The state of legal gender recognition in Poland remains largely unchanged despite the Parliament working on a legal proposal between 2012 and 2015. This procedure is still a matter of a civil court case between an adult and their parents and/or legal guardians, and has not been codified. On December 6th 2013, the Polish High Court delivered a ruling, which effectively complicates the process even further as it demands that a person seeking legal gender recognition sues both their parents, their spouse (if divorce was not finalized) and their children.

Recommendations:

1. To adopt legislation enabling same-sex couples to enter into a civil union contract.
2. To ensure that all children with foreign birth certificates can access to a polish citizenship, including those born abroad from same-sex families.
3. To modify article 119, 256 and 257 of the polish criminal code and to add sexual orientation and gender identity as a protected ground.
4. To establish quick, transparent and accessible procedures defined within a legal framework that effectively distinguish between the legal and medical process of transition, leaving medical aspects between individuals and their healthcare providers, and ensure that no medical interventions are required to access legal gender recognition.
5. To amend the Act on Equal Treatment to prohibit discrimination comprehensively including sexual orientation and gender identity in all spheres and sectors, including education, health care, social protection and housing.
6. To ensure non biased curriculum on sexual orientation and gender identity issues in formal education system by introducing antidiscrimination standards obligatory for school textbooks.
7. To implement non biased scientific knowledge about SOGISC in medical curriculum in higher education system for future medical staff and provide measures enabling increasing competences among medical practitioners regarding taking care of LGBTI patients.

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