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**The Socialisation of Politics in Europe: A Case Study of Lesbian Gay Bisexual
and Transgender Rights in Poland**

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Introduction

In the past fifteen years the lesbian, gay, bisexual and transgender (LGBT) movement has become global. The movement has managed to gain access to organisations such as the United Nations (UN), the European Union (EU) and various human rights non-governmental organisations (NGOs) (Rothschild, 2004; Saiz, 2006; Swiebel, 2009). The success of the LGBT movement in these international organisations is still subject to some debate. Swiebel (2009) outlines the reasons for the successful entrance into the EU over the UN, whereas Saiz (2006:59) argues that there is more or less a consensus in favour of LGBT rights at the UN, with only a select few holding back progress. However, the most recent attempt in 2008 at the promotion of LGBT rights at the UN is evidence of how hotly debated the subject still is. The proposal for a UN declaration on sexual orientation and gender identity was met by stiff opposition by the Holy See and the Organisation of the Islamic Conference – and resulted in an opposing declaration, signed by 60 countries, rejecting LGBT rights as human rights (Reuters, 2008).

The movement has been far more successful in Europe. Taking advantage of European human rights courts, European integration and the strength of civil society, the LGBT movement has managed to access European organisations and lobby for protection of their rights. European organisations – such as the European Union, Council of Europe (CoE) and the European Court on Human Rights (ECtHR) – now actively promote LGBT rights. Currently five European countries recognise same-sex marriage, with many more recognising same-sex unions. However, only three of these countries were formerly part of the Communist Bloc (Campaign Against Homophobia, 2009a).

The purpose of this dissertation is to assess the effect of European organisations on the situation of LGBT rights in a laggard state. I have chosen to use Poland as a case study for several reasons. Due to levels of social conservatism and religiosity, connected to national identity and fears of cultural loss, Poland has been hostile towards the idea of LGBT rights. Discrimination against homosexuals is only prohibited in employment in Poland, and many LGBT Poles have suffered discrimination because of their sexuality (Gruszczynska, 2007:96). There are no

same-sex unions or child adoption for homosexuals, and the Polish constitution (1997) states that marriage is between a man and a woman (Article 18).

The end of communist rule by 1991 provides a starting point to assess the effect of European integration. The period of accession to the EU up to 2004, was also expected to give the EU more power to dictate the conditions that Poland must meet in order to become a full member. It was expected that social tolerance and respect for LGBT rights would improve after Poland joined the EU. However, between 2004 and 2007, the situation declined as public homophobia by political and religious officials became commonplace and LGBT marches were banned and attacked by counter-protesters (O'Dwyer and Schwartz, forthcoming, 2010; Amnesty International, 2006).

This period coincides with the progress of LGBT rights onto the European agenda. Although the ECtHR was being used to end discrimination as early as the 1980s, it was not until the ratification of the Treaty of Amsterdam in 1998 that the EU was given the competence to begin to tackle discrimination based on sexual orientation. Both these organisations have progressively been passing more hard law¹ on LGBT rights, although still falls short of full equality. There have been far more achievements in Europe when the focus is shifted towards norm creation more generally.² Various reports, resolutions and campaigns concerning LGBT rights – alongside the limited binding measures - have been promoted with the backing of international organisations and several more progressive governments. Although this strategy is more appropriate for tackling the social and cultural issues that create intolerance, it is also more vulnerable to opposition in domestic politics. In order to assess a norm at the European level, this dissertation focuses on actions taken by the European Union and European Court of Human Rights. This will take into account the level of consensus among their member states, how much of this permeates the organisation's agenda and how strongly it is supported by these organisations.

¹ Hard law refers to international law that is binding, precise and enforced by a third party. Soft law, on the other hand, may not be binding, precise and is not enforced by a third party (although it can often involve some degree of each). For a full assessment of international law and these terms see Goldstein et al. (2000).

² A norm is defined as “collective expectations about proper behaviour for a given identity” (Risse and Sikkink, 1998:7).

The methodology of this dissertation comprises an in-depth literature review, NGO and European Parliament (EP) reports, examples from directives issued by the EU, European Court on Human Rights and European Court of Justice (ECJ) case decisions and open-ended questionnaires conducted via e-mail with four Polish LGBT activists. Where these various sources of information are used is detailed in the chapter structure below. As the information obtained from the questionnaires only appears in chapter four, the introduction to that chapter includes the full methodology of the questionnaires and all of the considerations taken into account.

The dissertation is structured as follows:

Chapter one, the literature review, will outline and assess the existing literature and theories relevant to this subject. This will cover issues such as how the movement is framed at both the national and international level and literature on European influence. Particular attention is paid to the socialisation of politics in Europe.

Chapter two is on the situation of LGBT rights at the European level. The aim of this chapter is to assess the level of consensus at European organisations, which particular issues and rights are established and to what strength they are enforced. This chapter is split into sections on general norm creation and hard law and uses information from cases before the ECtHR and the ECJ, directives issued by the EU and EP reports and resolutions.

Chapter three will cover the issues in Poland that put the LGBT movement into context. This chapter covers examples of homophobia in Poland and outlines the reasons behind it. It is based on existing literature on LGBT rights and identity in Poland and on NGO reports by Campaign Against Homophobia (KPH) and International Gay and Lesbian Association Europe (ILGA-Europe).

Chapter four is primarily based on information obtained through the open-ended questionnaires with Polish LGBT activists. It will analyse the effect the European organisations have on Poland through the effects of hard international law on Polish legislation, and the effects the norm has had on attitudes and levels of tolerance. This

chapter takes into account how actions at the European level are received by Polish politicians and how European links have assisted the Polish LGBT movement.

The conclusion will bring together the various aspects of this dissertation and comment on how effective European socialisation as been on LGBT rights in Poland and highlight possible future developments.

Chapter 1- Literature Review: The emergence of LGBT human rights and theories of European influence

There are several relevant issues that have to be assessed in order to place this dissertation in context. A great deal of literature already covers how LGBT rights are framed, both nationally and internationally, and the various theories of European integration and supranational influence. The first section will cover the positive and negative aspects of how the LGBT movement is framed internationally. Then consideration will be given to how the various aspects of the movement are framed and how this translates from the international/European level to within Poland. The second section will review the literature on European integration and influence. The focus of this section will be on the various processes behind Europeanisation, and which are relevant to the Poland.

Theories on Rights-Based Discourses

The debate over how to frame the LGBT movement revolves around citizenship-based arguments and human rights discourse. This section will focus on the main aspects of these arguments and their development.

In the last fifteen years the framing of issues in terms of 'human rights' has become central to the LGBT movement, especially at the international level. This takes advantage of the network of human rights NGOs, the status that human rights discourse already holds in democratic societies and the pre-existing human rights treaties. In the 1990s the LGBT movement managed to overcome the barriers of homophobia, of regarding homosexuality as a disease and the general reluctance of NGOs to take on LGBT issues, to access the main 'gatekeeper' human rights NGOs, such as Amnesty International and Human Rights Watch (Mertus, 2007:1038). LGBT rights, framed as human rights, have benefited from human rights' courts reinterpreting terms such as "sex" to include "sexual orientation" and from applying provisions on freedom of assembly and expression, privacy and discrimination to cases involving LGBT issues (see chapter two). The movement has also benefited from the access those human rights NGOs enjoy at international organisations, such as consultative status at bodies of the UN (Mertus, 2007).

Kollman and Waites (2009:1) outline some of the recent developments of LGBT human rights, such as the Declaration of Montreal (International Conference on LGBT Human Rights, 2006) and the Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006). These are both high-profile international documents signed by human rights experts. Both documents frame LGBT issues in terms of human rights and call for states to end all forms of discrimination against LGBT people. One of the most recent international developments was the 2008 proposal for a UN declaration on sexual orientation and gender identity (ILGA-Europe, 2008). This proposal, initiated by France and the Netherlands and signed by 67 states, focuses on upholding the basic human rights – protection against execution, torture and unlawful detention³ – and condemns all violence against LGBT people. However, this also resulted in an opposing statement rejecting LGBT rights as human rights that was supported the Organisation of the Islamic Conference and signed by 60 states (Reuters, 2008). The Vatican also issued a statement opposing this proposal claiming it “challenges existing human rights norms” (Holy See, 2008).

Research has already been conducted assessing the impact of the LGBT movement in Europe. In a study on same-sex unions, Kollman (2009) found that the EU, ECtHR and a transnational network of NGOs have managed to create a same-sex union norm in Western Europe. Interestingly, she found that informal processes behind norm diffusion were more effective than binding mandates imposed by the EU and ECtHR decisions. However this norm is yet to extend to include post-communist European countries.

Using human rights has been beneficial to the movement. It has helped fostered alliances with general human rights based organisations, benefited from the status and legitimacy human rights holds, has facilitated access to human rights courts, resulted in the reinterpretation of existing treaties to protect sexual minorities and opened new doors to international organisations (Mertus, 2007; Swiebel, 2009). However, human rights discourse can also impose limitations on the LGBT movement. Judicial

³ Risse, Ropp and Sikkink (1999:2) outline these rights as the most basic human rights.

victories for the LGBT community tend to be based on notions of privacy, freedom of expression, non-discrimination and self-determination. Although this may seem to cover a variety of issues, it can be restrictive in respect to marriage and child adoption. There is also still significant opposition to same-sex marriage and child adoption, even though many human rights treaties provide for a right to family life. The ECtHR has been reluctant to make decisions in these areas without a consensus among its member states (European Court on Human Rights, 2002).

According to Waites (2009:152) the two terms most commonly used – sexual orientation and gender identity – are assumed to be fixed characteristic of individuals, and do not take into account socio-cultural realities. Attempts to apply these terms universally risks not covering all forms of expression (Kollman & Waites, 2009) or taking into account global cultural diversity (Waites, 2009). Mertus (2007) also highlights some limitations of human rights discourse. In the US the LGBT movement does not tend to use human rights discourse due to its association with distant and developing countries (Mertus, 2007:1050).

Citizenship has been a useful concept for the LGBT movement due to the sway it holds in liberal democratic theory. Shafir and Brysk (2006) outline the origins and development of human rights in relation to citizenship. They detail the development of citizenship rights, their expansion to include civil, political and social rights, and their expansion to the working class and minority groups (Shafir & Brysk, 2006:277-279). This is based on earlier work, particularly that done by Marshall (1950), which claims that citizenship emerges when individuals are able to make claims against the state, which then incorporates them into the national community. However, simply making these claims is not enough, the state has to recognise and protect them (Phelan, 2001:16). Furthermore, social citizenship rights – the right to housing, a pension, unemployment benefits, education etc. – are paid for by the state out of a common fund raised by taxation in order to uphold a standard of living that each citizen is entitled to as a member of the national community (Shafir & Brysk, 2006:283). Who can be part of this community is a vital component of who can be a full citizen.

During the 1990s a significant amount of research was devoted to dissecting the meaning of citizenship and assessing how it could be used in various ways for the LGBT community, leading to the creation of the term “sexual citizenship”. The relationship between sexuality and citizenship has attracted a considerable attention, which is yet to lead to a single agreed definition of sexual citizenship (Richardson, 2000:105).⁴ Wilson (2009:75-76) maps out sexual citizenship in terms of rights claims against the state, allowed by progressive transformation of society to accommodate for LGBT groups. It builds heavily on the concept of citizenship outlined above.

The citizenship framework also encompasses work done on the public and private dichotomy – which Wilson (2009:77) criticises as failing to “recognise the complexity and interrelatedness of sexual politics (a criticism she extends to rights-based discourses in general). According to Painter and Philo (1995), the ability to participate in the public sphere without being victimised or made to feel out of place determines who can enjoy full citizenship rights. Similarly, Marston (2002), after analysing New York’s St. Patrick’s Day events,⁵ found that only those who are allowed to demonstrate publicly are allowed to be part of the national community. This concept is relevant to the LGBT movement as issues of sexual identity are traditionally private, with sexual minorities often finding it difficult to enter the public sphere (Bell, 1995). According to Valentine (1996) the public realm is considered to be heterosexual and masculine, making it more hostile to LGBT displays. Full citizenship for LGBT people can only be attained when they have equal rights to other citizens that can be displayed in public without being ostracised.

The citizenship-based approach takes the issue further than just the granting of rights by demanding recognition and tolerance in the public sphere. It also appeals to a sense of community and nationalism, whereas human rights can sometimes be viewed as a foreign concept alien or even hostile to cultural values. However, the citizenship framework faces severe limitations in the international realm. By their very nature citizenship arguments are communitarian, not cosmopolitan. The association with

⁴ For literature on various aspects of sexual citizenship see Bell and Binnie (2000), Richardson (2000), Phelan (2001), and Wilson (2009).

⁵ Marston believes this parade, a celebration of Irish identity in America, to act as a litmus test for who can be a part of the community.

nationalism and the society of the nation undermines attempts to apply these values transnationally. Attempts to create a concept of transnational citizenship have been undertaken by the EU and the Council of Europe. However, according to Checkel (2001) the concept of European citizenship is still rather weak as Europeans still identify more with their home nation than the continent. This is particularly strong with the Polish case, which will be assessed in chapter three.

Both the human rights and citizenship frameworks have been important to the LGBT movement. Whilst the human rights approach has been adopted at the European level, citizenship appears to remain the primary method employed within Poland – although there are also examples of human rights discourse being used.

Theories on European influence

The process of European integration has led to a vast amount of literature analysing and assessing how and why it occurs and what influence it has on various actors. Alter (2000) outlines the way in which the European Court of Justice (ECJ) could be used for progressive change. If used correctly the EU's court, the ECJ, could be used to expand Community law and apply it to member states, provided the member states are still in favour of further integration. However, due to the current lack of Community law concerning LGBT rights and the reluctance of the ECJ to expand it (Stychin, 2003:81), this approach has been limited. The ratification of the Lisbon treaty (2007), which makes the Charter of Fundamental Rights legally binding, is expected to lead to an increase in Community law concerning LGBT rights. There is already evidence of this occurring with sexual orientation in the work place after the Treaty of Amsterdam (1997) as is demonstrated in chapters two and three. However, as the Lisbon treaty was only been recently ratified, there has not yet been sufficient time to assess the continuation of this process.

The Europeanisation literature, covering how European levels of governance can influence individual European states, is particularly useful here. Although Europeanisation is a rather broad term that includes a large portion of the literature on Europe, scholars such as Mair (2004) and Cowles, Caporaso and Risse (2001) have taken it upon themselves to define it. They state that it accounts for the creation of a

European level of institutions (political, legal and social) that formalise interactions among actors and exert adaptational pressure on non-conforming states. It is part of this broad theory - the socialisation of politics - that is most relevant here due to its focus on how European politics influence national politics. This occurs through a variety of mediums – such as increased interaction with other European states, organisations and local activists employing methods and lobbying tools from their European counterparts.

Socialisation occurs when a state's national policy is at odds with the views of the international community (or regional, in this case). Checkel (2005) introduces three mechanisms of socialisation that are used to explain policy changes in Europe, and identifies two types of change. Socialisation is defined as “the process of inducting actors into the norms and rules of a given community” and it can have two outcomes: the national actor simply rationally adapting their behaviour to what is deemed appropriate by international standards; or the national actor actually adopting the norms of the community as their own views (Checkel, 2005:804; Schimmelfennig, 2005). If there is an incentive to adapt, actors may change their practice by rationally calculating the consequences of their actions, in a process called *strategic calculation*. If there is long, sustained and intense interaction between the actor and the norm environment, then the actor may adapt his behaviour to what is deemed appropriate by *role playing* (Checkel, 2005:811). If an actor becomes convinced that the international norm is the correct way to act they will adopt the norm into their own identity in a process called *normative suasion* (Checkel, 2005:812; Risse, 2000).

These outcomes are not isolated from one another. According to Risse and Sikkink (1999), states often initially comply due to rational cost-benefit calculations, then over time and after engaging with international organisations and NGOs they begin to institutionalise the norm and adopt it into their own identity. This implies that laggard states such as Poland will change their behaviour towards LGBT rights due to cost-benefit calculations at first, and will then begin to adopt them into their own national identity over time. The first two processes are more applicable to the actions of politicians, particularly those that engage in European politics, than to societal attitudes of the general population, as cost-benefit calculations tend to be dispersed among the latter.

In order for normative suasion to take place, international norms have to permeate down into the local level. Research by Gordon and Berkovitch (2007) and Merry (2006) has found that national and local NGOs play a central role in translating international human rights norms into local culture. According to Kollman and Waites (2009:9) and Risse and Sikink (1999:4-5), the success of NGOs in trying to implement an international norm depends on the opportunities that their home political structure allows, their access to resources (both national and international) and the level of institutionalisation the norm has achieved internationally. In this case, the Polish LGBT movement plays a central role in the socialisation process.

This approach provides a useful framework to assess the implementation of LGBT rights in Poland. Due to reasons associated with national identity and religion, the Polish government is rather hostile towards LGBT rights. Change induced by Europe is likely to occur, at first, as strategic calculation or role playing based on the minimum change deemed to be necessary or appropriate. Normative suasion will take longer to influence Polish politics. This mechanism depends more on the success of the Polish LGBT movement – which, in part, is aided by European funding and projects. The next chapter will assess LGBT rights at the European level and determine the extent to which they have established a norm.

Chapter two – LGBT norms at the European level

International co-operation in Europe is stronger than any other region in the world. The process of European integration over the latter half of the 20th century and into the 21st has resulted in binding, precise and properly delegated supranational law. Two international organisations in particular uphold and administer European law, the European Court on Human Rights and the European Union. This has placed these European organisations in a unique position to put pressure on the Polish government and to help reduce intolerance.

A new norm has emerged in Europe in favour of LGBT rights. The aim of this chapter is to assess its strength and the issues it covers. It is promoted through both hard law (European laws that have to be adopted by the Polish authorities) and norm creation (non-binding measures and projects at the European level that attempt to influence states). Hard, binding law alone is more likely to change only legislation in Poland, but requires a strong consensus in favour of LGBT rights before it can be created at the European level. This is administered by either the EU or the ECtHR, although the latter is significantly weaker as court decisions concerning any one country neither set a legal precedent nor alter the original convention (Kollman, 2009:43).

Norms are created by hard European law and a variety of campaigns, reports and other activities promoting LGBT rights. This approach attempts to change attitudes towards LGBT people in order to induce change, as opposed to forcing legislative change via supranational power. This encompasses the different types of socialisation covered in the literature review. The Polish authorities respond rationally to hard European law administered by supranational organisations and change their behaviour by either logic of consequences or appropriateness, which, alongside other activities, is used to attempt to change societal attitudes towards sexual minorities through normative suasion (Checkel, 2005:804). Given that the current Polish government is strongly opposed to LGBT rights, the theory of socialisation indicates that only hard law at the European level will be able to induce legislative change, whilst normative suasion will have to contend with Polish cultural values.

Currently this norm covers issues such as prohibiting some forms of discrimination, legalising homosexual acts, equal ages of consent for both heterosexual and homosexual sex, ending exclusion of homosexuals from the military and recognising the new sex of a post-operative transsexual, as outlined in the rest of this chapter. However it is still to fully develop on issues of same-sex unions and child adoption. As identified in the literature review, this norm has developed in Western Europe through the EU and the ECtHR. As much of Central and Eastern Europe was under communist rule and was somewhat isolated from this norm development until the early 1990s, this norm has yet to fully extend eastwards.

In order to assess this new norm the first section will look at how the movement is framed and how the rights are promoted in Europe. The second section will cover some of the soft law and other methods employed at the European level concerning this norm. Although NGOs have been vital to the creation and promotion of this norm, this section will focus on activities by the EU and the ECtHR in order to set the basis for assessing the socialisation aspect in chapter four.⁶ The final section will assess binding measures taken at the European level concerning LGBT rights.

The promotion and framing of LGBT rights in Europe

LGBT rights have been far more successfully established in Europe than any other region in the world. This success is attributed to the willingness of certain governments to promote the issue, the strength of LGBT and human rights organisations and their level of participation in the EU, the current state of regional cooperation in Europe, and due to actors within European organisations promoting the issue (Graham, 2009; Kollman, 2009). LGBT rights have primarily been promoted as human rights, especially after gaining access to the main human rights NGO gatekeepers in the 1990s (Mertus, 2007:1038).

The concept of human rights is already firmly established in international relations. Human rights organisations already enjoy access to many international organisations

⁶ For literature concerning transnational NGO networks and their influence on LGBT rights debates in Europe see Kollman (2007; 2009) or Sikkink and Keck (1998) for the importance of transnational advocacy networks on norm diffusion.

and have experience promoting issues in ways that garner more support from democratic societies and apply pressure to political actors. For example, ILGA-Europe enjoys consultative status at ECOSOC, participation in the Council of Europe and financial support from the European Commission (ILGA-Europe, 2009). Rothschild (2004:167) states that the three goals of human rights reporting are specifying the abuses, naming the perpetrators and calling for a remedy. This method has already been proven successful by human rights organisations in a variety of issues. The LGBT movement has also benefited from the unique position that the European Court on Human Rights holds over European member states. This court holds jurisdiction on any issues that fall under the ECHR. It is in an unprecedented position to uphold human rights and to reinterpret some of the existing clauses in the Convention to expand its coverage (Moravcsik, 2000).

Human rights courts are able to take advantage of Articles covering privacy, freedom of expression and non-discrimination (Articles 8, 10 and 14, respectively, of the ECHR) (Graupner, 2005: 110). This means that the LGBT movement can take advantage of international human rights treaties already signed by states, as opposed to pushing for LGBT-specific articles which can be significantly harder to achieve. Although new treaties are required for achieving adequate protection, using existing treaties has proved to be a necessary step towards creating an international norm.

Although the human rights approach has been beneficial to the movement internationally, some progress has been made at the European level through economic based rights. Discrimination against homosexuals was originally promoted at the EU as an internal market issue (Swiebel, 2009:28). Due to the economic focus of the EU, it is not surprising that LGBT rights have found their starting point at this organisation in the internal market. In the last ten years, however, the EU has turned towards a human rights based approach in order to tackle discrimination in its member states – culminating in the Charter of Fundamental Rights being made binding by the ratification of the Lisbon Treaty in 2009.

Norm creation and soft law in Europe by the European Union

When soft law and other activities are considered considerable action has been taken to tackle discrimination against the European LGBT community. Although it is not legally binding, precise or properly delegated to a third party, soft law has been central to creating a European norm (Kollman, 2009). This covers European Parliament resolutions, reports from the European Commission, campaigns, funding for local and national NGOs and any activity at the European level that touches upon LGBT rights. Although the Council of Europe has been very active in this area through the ECtHR, this is assessed in the next section due to the binding nature of ECtHR decisions. To assess this norm the work the EU has done in the area will be examined. Although other European organisations have been central to norm creation, the EU is now in the most influential position due to the material incentives it offers. These benefits, such as access to the internal market, funding and voting rights, create a strong motive for political actors to adapt their behaviour to EU norms. The activities of the EU also provide an overview of what issues are covered by this norm.

Most of the activities by the EU concerning LGBT rights are classed as soft law. In 1993 the European Council called on potential EU accession states to meet standards on the rule of law, democracy, human rights and the protection of minorities – known as the Copenhagen criteria (Swiebel, 2002). This was aimed at helping to secure democracy in Central and Eastern European countries that had recently experienced the transition to democracy and the market economy. This also highlighted the EU's shift away from a purely economic organisation to a 'community of values', as outlined in the Copenhagen criteria in 1993 (Swiebel, 2002).

There have been several European Parliament committee reports calling for an end to discrimination based on sexual orientation from as early as the mid 1980s. The Scarcialupi Report in 1984 detailed the unequal treatment of homosexuals in the workplace and called for the Commission to act (although it took until 2000 for this to happen) (Swiebel, 2009:22; European Parliament, 1984). In 1994 the Roth Report was presented to the parliament. It went further than the Scuarcialupi report and called for equal rights for homosexuals in all areas and also requested the Commission to address the issue of same-sex marriage and child adoption (Sanders, 2002:19; European Parliament, 1994). According to Kollman (2009:42) a section on sexual orientation has been included in the annual reports on human rights of the European

Parliament since 1994. The issue of equal rights raised in these reports has been partially addressed by the Charter of Fundamental Rights in the Lisbon Treaty (2007). However the fact that the United Kingdom and Poland have both opted out of the Charter undermines the EU's stance on LGBT rights to some extent.

Some of the most recent developments include the 'Homophobia in Europe' resolutions by the European Parliament in 2006 and 2007 (ILGA-Europe, 2006; European Parliament 2006; 2007). They call for an end to discrimination against LGBT people in Europe and requested that the Commission extend the scope of legal protection for LGBT people to cover the same areas that racial and gender discrimination is prohibited in. The second report took a more direct approach and focused its condemnations on particular member states, including Poland. The calls for new anti-discrimination measures were answered by a proposal for a directive (CNS 2008/0140), which has yet to be adopted. This is covered in the next section.

The EU has also funded publications in order to raise awareness. In 1993 they funded the publication of 'Homosexuality: A European Community Issue' which highlighted the discrimination homosexuals face in economic, political and social spheres (Waaldijk & Clapham, 1993). The European Parliament and the Council also established a European Year of Equal Opportunities for All (2007) which aimed to raise awareness, recognition, representation and respect of various protected categories, including sexual orientation (Decision 771/2006/EC).

The EU has also acknowledged that legislation alone is not enough to combat discrimination. Funding has been granted to NGOs to raise awareness and tackle discrimination to all of the groups mentioned in Article 13 of the EC – religion, belief, age and sexual orientation (Swiebel, 2002). The Community Action Programme to Combat Discrimination was initiated by the European Council in 2000. It directed funds to organisations that prevent and combat discrimination (Graham, 2009: 300). The European Social Fund also funded the EQUAL projects, which aimed to tackle discrimination against those seeking jobs and in the workplace. According to Graham (2009:301) the EU's total contribution between 2000 and 2006 to these projects was 2,847 million euros.

These examples of actions taken by the EU represent a European soft law norm in favour of full LGBT rights. The majority of activities here focus on anti-discrimination. Although some of the European Parliament reports commented on same-sex unions and child adoption, these areas are less developed at the EU. There may be a same-sex union norm in Western Europe (Kollman, 2009), but it is yet to extend to Eastern Europe. The reports issued in the European Parliament also outline the struggle between soft and hard law concerning LGBT rights at the EU. Despite a variety of actors calling for an expansion of legally binding law to cover sexual orientation, a few socially conservative countries have been able to hinder this process (Kochenov, 2007:489).

Hard Law in Europe

Hard, binding law at the EU generally requires a consensus among the majority of its member states before it is implemented. The EU and ECJ were only able to begin passing laws and judgements on issues relating to sexual orientation after the Treaty of Amsterdam (1997) allowed it to do so. The ECtHR has been able to interpret existing laws in the ECHR and apply them to cases involving LGBT people for longer (it began to do so in the 1980s); however it is often wary to do so if no general consensus exists on the issue among its member states (European Court of Human Rights, 2002). This section will cover laws and cases at the EU and the ECtHR, and assess what issues are considered binding by European law.

Directives and court cases at the European Union

The European Union has played a vital role for the LGBT movement in Europe. Although hard law also contributes to norm creation, it is assessed here in terms of its binding nature which forces change in member states. The directives issued by the EU have authority over national law, just as ECJ decisions overrule national courts. This is particularly important to the case of Poland, which joined the EU in 2004 (the issues surrounding Polish accession to the EU are assessed in chapter three). The massive material incentives provided by the EU and the supranational power delegated to it place it in a unique position to induce change. Prior to joining the EU,

Poland had to meet a certain criteria and incorporate the *acquis communautaire*⁷ into national law. This meant that anything set out in these criteria had to be met by the Polish authorities before they could access the benefits of the EU (Swiebel, 2002).

Despite taking longer than the ECtHR to take LGBT rights onto its agenda, the EU has the potential to do more for their promotion. However, the EU contains only one binding provision concerning LGBT rights, although now that the Lisbon treaty was ratified in 2009, this may soon change. The Treaty of Amsterdam (1997) gave the Commission authority to tackle discrimination in employment and at the workplace. Based on this, Council Directive 2000/78/EC outlaws any discrimination in employment based on “religion or belief, disability, age or sexual orientation”. There has also been a proposal by the European Commission for a directive (CNS 2008/0140) aimed at ending discrimination in all areas of life; however it is still waiting on a final decision by the European Parliament.⁸

Protection against discrimination based on sexual orientation does not seem to extend as far as the protection other groups enjoy. Kochenov (2007:479) describes this as a community law hierarchy. For example, the directive against discrimination based on racial or ethnic origin (Council Directive 2000/43/EC) outlaws discrimination in education, social protection, involvement in organisations, access to goods and services – as well as in employment. Council Directive 2003/86/EC on family reunification also falls short of ensuring protection for homosexual rights as homo- and heterosexual relationships are treated as being inherently different, with the latter receiving better treatment (Kochenov, 2007:471). Directive 2004/58/EC also touches on the issue of same-sex unions, but is still rather limited. It states that a state has to recognise the rights of couples in a same-sex partnership only if both the host and home states have registered partnerships (Kollman, 2009: 43). Same-sex unions, therefore, are not treated as being equal to heterosexual marriage.

⁷ The *acquis communautaire* refers to the entire body of European law. It includes all treaties, regulations and directives passed by the institutions of the EU, and judgements by the ECJ. Candidates for membership in the EU are expected to incorporate this body of law into their national law prior to accession. However, due to the vast amount of law (over 80,000 pages) the *acquis communautaire* covers, there are discussions over if it is realistic for accession states to implement everything correctly (Swiebel, 2002).

⁸ Progress of the proposal can be viewed at <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=en&procnum=CNS/2008/0140>

There are a number of reasons for this lack of protection. It was only since the ratification of the Treaty of Amsterdam in 1998 that the EU had the mandate to extend protection to LGBT people – which was still limited to the workplace. Stychin (2003:79) puts these limitations down to the economic, market-oriented nature of community law, which impedes the rights-based approach to social policy at the EU. However, recent support for the EU protecting social rights has risen to 64% (of Europeans polled), indicating that the EU could begin to play a greater role in social policy (Eurobarometer, 2009:150).

Kochenov (2007) argues that the failure of the ECJ to create suitable case-law is the reason for the lack of legislation protecting sexual minorities. It is important to note here that the ECtHR possesses a special significance as a source of principles for the ECJ, but is not binding. It is up to the ECJ to incorporate the ECtHR's decisions into Community law as it sees fit. The ECJ has diverged from other courts and judicial bodies, such as the ECtHR and the UN Human Rights Committee, that have reinterpreted the term “sex” in treaties to include “sexual orientation” (Stychin, 2003:77).

The ECJ has refused to grant employment benefits to the same-sex partners on several occasions. In the United Kingdom, the *Grant v South-West Trains Ltd* case in 1998 (C-249/96)⁹ involved an employee of South West Trains being refused travel concessions for her lesbian partner with whom she was in a stable relationship (the company grants travel concessions to opposite sex partners of employees). The ECJ found that Community law prohibiting discrimination based on sex did not apply to this incidence, and ruled in favour of her employers. Stychin (2003:76) argues that the rights based approach in the Grant case was flawed as it would have distorted the meaning of sex discrimination clauses.¹⁰ In the case of *D and Sweden v Council of the European Union* (C-122/99 P and C-125/99 P), the ECJ found that same-sex unions

⁹ Further information on each case can be found via the ECJ's online database by entering the case numbers provided. Available at <http://curia.europa.eu/juris/cgi-bin/form.pl?lang=en>

¹⁰ This case was argued on the basis of discrimination on “sex”, not “sexual orientation”. This case was initiated before the ratification of the Treaty of Amsterdam in 1998, and so there were no European laws prohibiting discrimination based on sexual orientation.

do not equate to marriage, and therefore employment benefits granted to married couples do not apply to same-sex unions.

However, since then the ECJ has made some moves towards the issue of same-sex unions. According to Kollman (2009:42), the ECJ ruled in 2008 that employers must give full pension benefits to the surviving partner of a deceased employee if they were in a same-sex union (*Tadao Maruko v Versorgungswerk der deutschen Bühnen*, case C-265/06). However, this only applies to member states with same-sex unions already in place. Armstrong (1998:462) accounts for these limitations by claiming that the ECJ is wary of taking it upon itself to extend the scope of community law. This highlights tension between the treaties as being a simple negotiation between states or as acting as a European constitutional text – on this issue the ECJ tends to take the former view.

The Lisbon Treaty (2007) takes LGBT rights further. It makes the Charter of Fundamental Rights legally binding, which forbids discrimination based on sexual orientation in any situation. However, the United Kingdom, the Czech Republic and Poland have successfully opted out of this part of the treaty. As the Lisbon Treaty has only just come into effect there is no empirical evidence available yet on how it can be used to promote LGBT equality.

The role of the ECtHR in the development of LGBT rights in Europe

According to Moravcsik (2000:218), since the adoption of articles 25 and 46 (to allow individual petitions and recognise compulsory jurisdiction of the court) by all member states, the ECHR has “established effective supranational adjudication in Europe”. However, according to Graupner (2005) the ECtHR is still limited to areas where there is a favourable consensus among its member states. It was not until European states began to move towards LGBT rights in the 1980s that the ECtHR was able to do the same. But whilst the Court may have required progressive change in some states, the fact remains that many member states were still hostile towards LGBT rights at the time. As a result, the Court has been able to positively influence the behaviour of many European states concerning LGBT rights.

The Court's rulings do not set a legal precedent for itself or for other member states; although they do give some indication of how the Court is likely to decide on similar cases. The Court has been instrumental in creating a European norm on some LGBT rights. Although the Convention does not contain any reference to sexual orientation, the Court has since reinterpreted it and applied it to LGBT issues – mainly on provisions on privacy, freedom of expression and non-discrimination. For example, the 1980s saw the ruling that criminalisation of homosexual acts breaches Article 8 ECHR (privacy) (*Dudgeon v United Kingdom*, case 7525/76). In addition the Court has reinterpreted the term “sex” to include “sexual orientation” (*da Silva Mouta v Portugal*, case 33290/96); granted gay partners the same rights as non-married, cohabiting heterosexual couples (*Karner v Austria*, case 40016/98); barred the exclusion of gays from the military (*Smith & Grady v United Kingdom*, case 32377/96); forced the state to change the birth certificate of a person who has undergone sexual reassignment surgery (*Goodwin v United Kingdom*, case 28957/95); granted a person the right to marry a transsexual who was previously of the same sex (*I. v United Kingdom*, case 25680/94); ruled that a homosexual father has the right to have access to his daughter from a previous marriage (*da Silva Mouta v Portugal*, case 33290/96); and ruled that unequal ages of consent for heterosexual and homosexual acts is discriminatory (*Sutherland v United Kingdom*, case 25186/94).¹¹

These rulings give member states an indication of how the Court interprets the Convention on human rights. They have been successful in directly changing the way a government acts towards sexual minorities in each particular case¹² and have also been used by LGBT organisations to support their movements and helped legitimise their demands in the eyes of the general public. These cases can also be used as lobbying tools by national LGBT movement, as shown by use of the *Karner v Austria* case in the successful campaign for same-sex unions in Austria (introduced at the start of 2010) (Kollman, 2009:48).

¹¹ Further information on each case can be found on the ECtHR's online database by entering the case numbers provided. Available at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>

¹² In all of the cases mentioned above the government has been forced to make the necessary changes. However, there have also been incidences of governments being reluctant to make significant changes to the law, instead opting to do the bare minimum. This occurred in the *Karner v Austria* case, as shown in the next paragraph.

However, there are still obstacles to the advantages the Court gives to the LGBT movement. Even in the event of a positive ruling, a government may still resist changing national law. In a study involving same-sex unions in Austria, Kollman (2009) found that despite the ECtHR ruling in *Karner v Austria* that it was discriminatory that a gay man does not have the right to his deceased partner's tenancy (as unmarried, cohabiting heterosexual couples do) this did not lead to any immediate legislative change. Instead the government resisted reforming the law until it was forced to do so by Austrian Courts, which used the Karner ruling to their advantage (Kollman, 2009:48). So although the ECtHR's decision eventually led to change, it faced tough resistance by an unwilling government. This is an important example as it shows the obstacles an unwilling government can pose, which is precisely the case in Poland.

Despite the decisions mentioned above, the Court does not always rule consistently – which, according to Kochenov (2007:473), is in part due to the inclusion of more conservative Eastern European judges on the Court's panel. Therefore the Court may reverse a decision that had previously upheld LGBT rights. For example, the Court refused to acknowledge a post-operative transsexual as the biological father of his child born to his partner through artificial insemination (*X, Y and Z v United Kingdom*, case 75/1995/581/667), which is inconsistent with the Court ruling that states have to recognise the new sex of transsexuals (Sanders, 2002:16).

The Court also lags in the areas of child adoption and marriage. In the case of *Frette v France* (case 36515/97) the Court refused a homosexual the right to adopt a child. The Court decided to leave the decision of adoption to France, as there was no consensus of a homosexual's right to adopt a child among other member states (Kochenov, 2007:488; European Court on Human Rights, 2002: section 36). The Court has made some progress towards the issues of marriage and establishing a family with the *Karner* and *da Silva Mouta* cases, but still has some way to go (Kollman, 2009: 43). As these issues, particularly child adoption, are still disputed in many of the member states, the Court seems unwilling to act.

Graupner (2005:125) also points to the cost of accessing the court, saying that “the Court regularly does not award to (successful) applicants all of the costs and expenses

the application procedure incurred". This can exclude those who are not wealthy from accessing their rights under the ECHR, unless aided by a human rights organisation.

These examples have shown that the ECtHR is able to force states to recognise LGBT rights. However, when it comes to same-sex unions and child adoption, binding measures by the court have been extremely limited. Kollman (2009) has shown that the ECtHR has been used successfully to lobby for change by local actors through the process of normative suasion. Although the original Convention remains unaltered, and individuals would need to take similar cases to the ECtHR for a similar binding decision, previous decisions have been used as lobbying tools and to persuade domestic courts on how the ECtHR would probably rule if a case went that far. However this is also limited by the ECtHR's inconsistencies. In cases where the ECtHR makes a decision, states tend to abide due to strategic calculation (they would suffer reputation costs and possibly material costs at the EU). However, Court decisions have been used more generally as part of the normative suasion process.

These measures cover the hard law approaches taken to LGBT rights in EU. Community law has focused on preventing discrimination based on sexual orientation, but has fallen short of fully addressing all areas of discrimination, same-sex unions and child adoption due to the need for unanimity to pass binding directives and the reluctance of the ECJ and the ECtHR to promote a potentially controversial issue. Although hard law provisions may appear to be narrow they have been successful at inducing change in several European countries, including Poland. Some of these hard laws have resulted in socialisation via strategic calculation. Actors in a country respond rationally to European law and change their practice, not their attitudes, appropriately, or risk punishment. As with decisions by the ECtHR, Community law also has the potential to result in normative suasion socialisation through prolonged exposure and participation in European politics.

This chapter has shown the successes and limitations of the LGBT movement in Europe. On the hard law side LGBT rights enjoy some basic protection, but lack full coverage. Due to several Polish contextual factors outlined in the next chapter, it is these hard laws that will have the most direct effect on forcing legislative change. The soft law norms, although significantly weaker, are more inclusive to LGBT rights.

These soft law activities are vital to achieving equality through awareness raising and other positive programmes. However, they are more vulnerable to domestic factors. In countries more hostile to LGBT rights their potential for any quick solution is reduced. The next chapter will outline the situation of LGBT rights in Poland, focusing on the negative factors that have sought to reduce the impact of the European norm.

Chapter three: Putting LGBT Rights in Poland into Context

The aim of this chapter is to put into context LGBT rights in Poland, where homophobia appears to have been more prevalent than in many other European countries – particularly EU member states (Kochenov, 2007). During the communist era the LGBT community only existed in friendship groups and through the circulation of an underground newsletter (Gruszczynska, 2009a:315). The Catholic Church and Christian-Catholic societal values remained strong during this period despite efforts by the communist regime to suppress them. Furthermore since the collapse of communism, Catholicism has become a central tenet of Polish identity (Zielinska, 2000; Marody and Mandes, 2005). The strength of these values during the communist era and their re-emergence since has made Polish society very socially conservative and hostile towards LGBT rights.

Since the transition to democracy in the early 1990s pressure has been applied to Poland by European organisations and NGOs to conform to more Western European standards on LGBT rights (Graff, 2006), such as those highlighted in chapter two. This process has accelerated during the 2000s as Poland prepared for accession to the EU, finally joining in 2004. As the previous chapter highlighted, the EU is in a rather unique position to apply adaptational pressure due to the incentives it offers to new members. Poland also joined the Council of Europe in 1991 and signed up to the European Convention on Human Rights, although it opted out of protocol 12 (Council of Europe, 2009).¹³ Now the ECtHR has jurisdiction over any issues that fall under the Convention in Poland, which gives the Polish LGBT movement a strong lobbying tool.

The EU pre-accession period also provided a golden opportunity for the LGBT movement within Poland to lobby for greater LGBT rights; however, this only resulted in discrimination against sexual orientation being prohibited in the workplace, which was part of the *acquis communautaire*. Whilst this was the case during the pre-accession period, after 2004 there was less pressure to uphold LGBT

¹³ Protocol 12 applies the grounds covered in article 14 (non-discrimination) to the exercise of all legal rights and to public authorities in the member state.

rights. According to O'Dwyer and Schwartz (forthcoming, 2010:13) this is because the European Commission monitored accession during the pre-accession period, so any illiberal tendencies could jeopardise Poland's membership in the EU. O'Dwyer and Schwartz (forthcoming, 2010:2) also state that this helped prompt the LGBT movement to go public in 2001, as they felt secure knowing the EU was watching. However after membership was secured, monitoring was reduced. Currently discrimination based on sexual orientation is only prohibited in the workplace. Some commentators, such as Watson (2000), have criticised EU equality policies for being too Western-orientated and for not taking into account social differences in post-communist countries.

The current ruling coalition in Poland – consisting of Civic Platform (PO) and the Law and Justice Party (PiS) – is right-wing and socially conservative (Graff, 2006:436). The political right have been in power since 2005 and have been openly homophobic and hostile to the LGBT movement, as demonstrated in the next section of this chapter. Even the left-wing parties, such as the Democratic Left Alliance (SLD), show only lukewarm support for LGBT rights due to strong public opposition. Although there was a proposal for a same-sex unions bill by a SLD senator in 2003 (whilst they were part of the ruling coalition), it did not make it through parliament (Gruszczynska, 2007:97). It is also important to note that the Polish constitution defines marriage as between a man and a woman (Article 18), creating difficulties when it comes to legislating for same-sex unions. In reality the left has only offered very limited support, with many of its own politicians still being opposed to LGBT rights due to the strength of social conservatism in Poland (Gruszczynska, 2007:97).

The following discussion in this chapter is based on the academic literature on LGBT rights in Poland and NGO reports on homophobia. The first section looks at examples of homophobia in Poland. The second section covers the reasons behind homophobic attitudes, taking into account post-communist issues and factors playing on national identity. This chapter concludes with a brief look at some of the positive developments and how the issues raised effect the socialisation process outlined in the literature review.

Examples of homophobia in Poland

Between 2004 and 2006 many homophobic statements were made by public officials in Poland. This included leading Catholic Church figures, such as the archbishop of Poznan who stated in 2005 that the Poznan LGBT equality march would be “an insult to the memory of John Paul II” and that “freedom of assembly cannot be used as a smokescreen for offending public morality” (Gruszczynska, 2009a:319). Leading politicians have also made homophobic public statements, with examples such as Lech Kaczynski, the current President, during his presidential campaign in 2005 said “public promotion of homosexuality will not be allowed; Kazimierz Marcinkiewicz, former Prime Minister, said in 2005 that “if a person tries to infect others with their homosexuality, then the state must intervene in this violation of freedom”; and Wojciech Wierzejski, a former MEP, said in 2006 that “if deviants begin to demonstrate, they should be hit with batons” (Amnesty international, 2006). These officials, both political and religious, often associated homosexuality to paedophilia (ILGA-Europe, 2001). As recently as 2010 a member of parliament for the PiS compared homosexuality to paedophilia, among other practices such as necrophilia and zoophilia (Campaign Against Homophobia, 2010). Amnesty International (2006) has documented such statements by leading politicians, arguing that they create an environment in which homophobia and discrimination is acceptable in society.

In addition, the head of the National In-Service Teacher Training Centre in 2006, Teresa Lecka, stated that “active homosexuality is contrary to human nature” and that it is inappropriate to discuss homosexuality at schools. This was said after she replaced the previous director who had been fired for supposedly spreading literature that encourages parents to meet with LGBT NGOs – which turned out to be the Council of Europe’s anti-discrimination handbook, *Compass* (Amnesty International, 2006:6-11). Other incidences have been recorded such as a public prosecutor attempting to charge the head of Campaign Against Homophobia (KPH) with insulting Catholics (Kochenov, 2007:485).

In 2003 the “Let Them See Us” campaign by KPH sparked widespread controversy across Poland. The campaign consisted of displaying on billboards and in galleries throughout the country thirty pictures of homosexual couples holding hands. The

intention was to create a positive image of homosexuals. The result was the majority of the billboards being defaced within several days (Graff, 2006:438). According to Graff (2006:438), most of the public outrage at this campaign centred upon fact that this perceived defiant behaviour was being displayed publicly and was being funded, in part, by tax-payers money via the office of the Government Plenipotentiary for Equal Status of Men and Women – which was later abolished after the political right regained power in 2005, leaving it the only EU country without an equality watchdog (Amnesty International, 2006:7). This public display of homosexuality also sparked strong opposition to the LGBT equality marches, which had started a few years earlier (Graff, 2006).

The first equality march¹⁴ took place in 2001 in Warsaw. The marches are part of a larger LGBT event that includes a celebration of sexual identity organised by representatives of the Polish branch of International Lesbian and Gay Culture Network (Gruszczynska, 2007b:2). They form an important bridge into public activism for the movement, which had previously been confined to the private sphere due to the legacy of repression under communism and the post-communist resurgence of Catholic values. The first marches, starting in 2001, tended to go unnoticed and lacked media coverage, which was the norm until KPH's "Let Them See Us" campaign (Graff, 2006:438). From 2004 onwards marches were met by stiff opposition by nationalist and religious groups and often resulted in projectiles (such as fruit, eggs and stones) being thrown at the marchers. Among the opposition protesters were the All Polish Youth, the youth branch of the League of Polish Families – a far right nationalist party that formed part of a coalition government from 2005 to 2007 (Gruszczynska, 2007b:6). Several marches were also banned by local authorities, but often took place anyway. In 2005 the Poznan March of Equality, which had been banned by the Mayor, was brutally dispersed by the police – resulting in 68 arrests (Gruszczynska, 2009b:44). Despite the negativity surrounding this brutal police intervention, it led to some positive developments in the protection of LGBT rights in Poland that are covered in the final section of this chapter.

¹⁴ The terminology employed here is also important. Although the first march was officially called a "parade", that name was soon dropped so as to avoid connotations with the more sexually explicit parades in Berlin (Graff, 2006: 438).

Given the examples of homophobia provided in this section, it is not surprising that some LGBT people choose to keep their sexual orientation private rather than face public discrimination. KPH is currently engaged in a project monitoring discrimination in Poland. Its 2008 report *When Words Are Weapons* provides a broad overview of many recent homophobic events and hate speech focussed on the LGBT community. KPH also found many cases of discrimination still occurring in the workplace, despite it being prohibited by Polish and European law (Campaign Against Homophobia, 2008:58). According to a survey on discrimination in 2004, 13% of homosexuals have suffered physical violence and about 30% have suffered psychological attacks as a result of discrimination, and 86% of people surveyed claimed they would not want their children to come in to contact with homosexuals (Gruszczynska, 2007:96). A more recent poll in 2007 by Pew Global Attitudes Project showed public opinion more evenly split over if homosexuality should be accepted in society: with 41% opposing it and 46% supporting.

Factors behind homophobia in Poland

Understanding the factors behind homophobia is vital to assessing how relevant activities at the European level can be, as Watson (2000: 381) has pointed out. These factors are ingrained in Polish national identity and cultural values and have been influenced by both the strong Catholic presence and the communist history.

There is already a vast amount of literature on the gendered nature of the transition to democracy and the market and the detrimental effect of the legacy of communism on the development of civil society. What is important to note from this literature is that public space is viewed as a more masculine arena where men appear as strong, individualistic, high-earners that are sought after by women (Marody and Giza-Poleszczuk, 2000) and that civil society takes longer to develop due to distrust of formal organisations and lack of civic culture and political skill (Howard, 2002; Adam, Duyverdak and Krouwel, 1999:352). Work done by Valentine (1996) has also shown public space to be coded as heterosexual. This makes public space both masculine and heterosexual in this case, which is threatened by public displays of homosexuality. Watson (1997) has found that as both men and women had formal equality under communism and were both equally deprived of political rights, gender

has faced formidable barriers as a political identification category. The communist authorities also persecuted homosexuals, compiling the 'pink files' on 11,000 suspected homosexuals (O'Dywer and Schwartz, forthcoming, 2010). This repression, alongside the resurgence of Catholic values in the post-communist period, provides some explanation for why it was not until 2001 that the LGBT movement began to demonstrate in public.

The Catholic Church maintained influence on Polish society throughout communist rule and entered the post-communist period in a privileged position. It remains influential in politics and society today (Borowik, 2002; Owczarzak, 2009). According to Borowik (2002) during the communist period, the Catholic Church was viewed as a bastion of freedom and protection from the communist regime. The role of Pope John Paul II, himself a Pole, in helping end communism peacefully by giving Poles courage to resist and by meeting with the Soviet leader Mikhail Gorbachev also contributed to the Church's moral authority (CBC News, 2005). Throughout the 1990s the Church was central to debates over abortion, which some commentators saw as more about citizenship and the nature of democracy (Kramer, 2007:64; Zielinska, 2000:24). Nowadays the Church appears more concerned with LGBT rights and Poland's place in Europe. Religious values are commonly appropriated by right-wing politicians, particularly when it comes to social issues and European politics (Gruszczynska, 2009b:44). In his 2005 presidential campaign Lech Kaczynski promoted his idea of a new Poland based on 'Christian values', as opposed to the liberal values proposed by other candidates (Gruszczynska, 2009a:323). As roughly 90% of the Polish populations identify themselves as Catholic, this holds a lot of sway over public opinion.

According to Marody and Mandes (2005:17) religion is still the main source of collective rituals that define national identity in Poland. This explains why debates in the 1990s over abortion and now in the 2000s over LGBT rights are subject to so much controversy. These debates cover where Christian beliefs lie in modern Poland and if they should take priority over some individual rights (Kramer, 2000). It also explains the outrage over KPH's "Let Them See Us" campaign and the sometimes violent reactions to public demonstrations by LGBT people as these public displays of

homosexuality threaten the otherwise untainted image of religious Polish identity (Gruszczynska, 2007:106).

Adam, Duyverdak and Krouwel (1999:355) outline the negative effects of religion and religious values in countries that lack state welfare. They claim that LGBT people are less willing to come out in public if they risk losing their job and have little social security to fall back on. Furthermore, if the family or organisations such as the Catholic Church are the main providers of welfare then LGBT people may be even less willing to come out. Research by Owczarzak (2009:440) has shown that the Catholic Church played a strong role in welfare provision after the collapse of communism in the 1990s.

In an interview conducted by Agnieszka Graff, a Polish human rights activist, with Jacek Kochanowski, an openly gay Polish academic, Kochanowski stated that the opposition to LGBT rights should be viewed in the context of Poland's integration into the EU and its culture of tolerance, pluralism and more secular nature which brings up fears of cultural loss (Graff, 2006:437). This is emphasised by the slogan "lesbians and faggots are the ideal citizens of the European union" shouted by right-wing, nationalist protesters at the Poznan March of Equality in 2005 – which highlights how some anti-LGBT rights protesters view Poland's integration into the EU (Gruszczynska, 2009b:44). Others on the right see Poland's accession to the EU as an "opportunity to reintroduce Catholic-Christian values to the mostly secular societies of Western Europe" (Gruszczynska, 2007:106). In this sense, LGBT rights and homophobia have been acting as a medium to channels fears of European integration and cultural loss. When assessing socialisation effect of European integration on citizenship, Checkel (2001:195-197) stated that his research suggests that Polish national identity is particularly strong, placing it in a position to resist European homogenising pressures.

The discussion here on national identity and who can demonstrate in public, mirrors the discussion of citizenship rights outlined in the literature review. Being able to be open about one's sexuality in public and still be a member of the national community is vital to the attaining of equality. The religious stance also questions the legitimacy of human right's claims since 'sexual deviants' are considered abnormal, and

therefore contrary to human nature.¹⁵ It is clear that LGBT people are making rights claims against the state but they are not yet being fully recognised. According to Kochenov (2007:486), the problem here is not just legal or structural, it is rooted in society.

Positive developments and the effect on European socialisation

Despite all the negative perceptions on LGBT rights discussed in this chapter, there have been some positive developments, in part thanks to the socialising effects of European politics. Although the next chapter will focus exclusively on how European organisations have aided LGBT rights in Poland, it is worth mentioning a few points here. As stated in the introduction, discrimination based on sexual orientation is prohibited in employment, which is a direct result from EU pressure.

The Polish Supreme Administrative Court ruled the ban on the Poznan march in 2005 (discussed above) to be illegal (Van den Bogaert, 2007:890), and the European Court on Human Rights ruled the Warsaw ban to be illegal as well (*Baczowski & others v Poland*, case no. 1543/06). The case brought before the ECtHR was done so with the help of the Helsinki Foundation for Human Rights and was argued on the grounds of freedom of assembly, non-discrimination and the right to an effective remedy (Van den Bogaert, 2007:889-890). As mentioned in the previous chapter, bringing a case to the ECtHR without the aid of an NGO could have been financially difficult (Graupner, 2005:125).

The police intervention at Poznan also sparked widespread debate over the nature of democratic freedoms in Poland. According to Graff (2006:441), the threat to democratic freedoms (namely the freedoms of assembly and expression) that the 2005 Poznan march highlighted triggered protests and shows of solidarity in other cities. A study of the role of emotion in shaping LGBT politics after the 2005 Poznan march by Gruszczynska (2009a:323) showed that the activists were able to use the brutal police

¹⁵ See the opposition to the proposed UN declaration on sexual orientation and gender identity covered in the literature review for more information to challenges about LGBT rights as human rights – by both the Vatican and Islamic countries. However, it is worth noting that Poland, along with all EU member states, supported the declaration.

intervention to tap into the legacy of Solidarity¹⁶ by drawing on similarities between the two movement (such as banned marches being met by police aggression) and the status of individual rights in Poland. This resulted in the movement garnering a wider array of support, including former communist-era dissidents, and sustaining further activism in a hostile environment. This also led to increased international scrutiny on LGBT rights in Poland.

This chapter has discussed the strength of Polish national identity and its association with social conservatism and religion, which suggests that normative suasion will face strong opposition. As the next chapter demonstrates, the Polish authorities have altered their behaviour to some extent as the logic of appropriateness process predicts, but this appears to be minimal. Although hard binding law by the EU would have to be adopted into Polish national law (as was the case with sexual orientation in employment), chapter two has shown that there are few of these binding laws, leaving the scope for a consequentialist approach by strategic calculation slim. This also suggests that the best chance for changing societal attitudes would have to come from NGOs within Poland, which are greatly helped by aid from European agencies and NGOs. As the literature review identified, domestic NGOs play a vital role to implanting LGBT rights into Polish national identity. The following chapter will take into account the issues covered here and use the information examined on LGBT rights at the European level covered in chapter two to assess if European politics and institutions have improved the situation faced by LGBT people in Poland.

¹⁶ Solidarity started as an independent trade union in 1980 and, despite significant attempts by the communist regime to destroy it, developed into a broader social movement opposing communist dictatorship. The principles the movement stood for during the struggle against totalitarianism has secured the idea of Solidarity as a defender of democracy and a bastion of freedom.

Chapter four – The socialisation of LGBT politics in Poland

The previous two chapters have brought to light the discrepancy between the European and Polish stances towards LGBT rights, indicating that European organisations will exert adaptational pressure on Poland. Although the European norm covers a variety of LGBT issues, it has to contend with the Polish domestic factors highlighted in chapter three. The discussion of the literature on European influence via soft law norms tends to take a social learning, constructivist approach; however it is unlikely that it will have any substantial effect due to the factors outlined in the previous chapter. By contrast, hard law at the European Union level has to be implemented or the country risks punishment. This chapter explores these processes through analysis of questionnaires conducted with Polish LGBT activists.

Methodological approach

In order to explore the processes of socialisation, email questionnaires with Polish LGBT activists were conducted. The questionnaires focussed on what the respondents perceived to be the main barriers to LGBT rights and how European organisations have helped overcome these barriers. The questions aimed to gauge if in 2010 the barriers outlined in the previous chapter are still as strong and how the respondents felt about the role of European organisations, given their experience in the Polish LGBT movement. Responses to the questionnaires provided an insight into the situation faced by LGBT activists and to their experience of help from European organisations. Four members within the Polish LGBT movement were contacted. Their contact details were publicly available on either their own organisation's website or ILGA-Europe's website. All four of the LGBT activists contacted gave express consent to be cited:¹⁷ Samuel Nowak, executive producer for Culture for Tolerance;¹⁸ Wojciech Szot, from the Lambda Warszawa Association; Greg Czarnecki, project coordinator for Campaign Against Homophobia; and Tomasz Szypula, vice president for Campaign Against Homophobia and reserve board

¹⁷ Although anonymity was offered, all of those contacted gave permission for their names and their relevant details to be used. In addition to being key to conducting ethical research, it was necessary to offer anonymity due to the levels of intolerance and homophobia still prevalent in Poland, as outlined in the previous chapter.

¹⁸ Culture for Tolerance was active with organising pride events in Krakow, but is no longer politically active. It now focuses on queer art.

member for International Lesbian and Gay Association-Europe.¹⁹ They were each chosen due to their experience in the Polish LGBT movement and were invited to answer four in-depth questions. They were also given the opportunity to discuss any of their answers in further detail in subsequent e-mails.²⁰

It is important to note the potential limitations this form of research encounters. This section is based on the professional opinion of those contacted, and therefore there is a risk that information could be perceived to be biased. However, the aim of this project is to gain insight into the views of activists working in this area, therefore this approach is valid. Another potential limitation is that only four activists were contacted and, with the exception of Samuel Nowak, they did not participate in any further discussion. This limited sample size could also restrict the information obtained. However, the project is not seeking to be representative of Polish views on the issue as a whole. The data obtained was analysed to assess the key themes relating to issues of LGBT discrimination as well as their professional opinion of the role of European socialisation on LGBT rights.

The following section will analyse examples of socialisation via strategic calculation and role playing where European politics have induced change in Polish politics based on calculations on consequence and appropriateness. This encompasses rational cost-benefit calculations and results from both hard European law and softer norms. The second section will assess evidence of the European norm becoming part of Polish identity via normative suasion.

Behavioural change in Polish politics

There are two examples of a European organisation imposing a binding decision on Poland concerning LGBT rights: EU Directive 2000/78/EC (on prohibiting discrimination based on sexual orientation in the workplace) and the ECtHR ruling in *Baczkowski and others v Poland* (ruled that Warsaw Pride ban was illegal). The EU directive was passed four years before Poland joined the EU. Because of this it was

¹⁹ See appendix one for additional information on the respondents and their organisations.

²⁰ See appendix two for a sample of the questions asked.

included in the accession package – the set of goals that Poland had to meet before being allowed to join the EU.

When asked about the role of European organisations concerning LGBT rights in Poland three of the respondents cited the either the EU Directive on non-discrimination or the ECtHR case, whilst one, Samuel Nowak, disregarded the EU as having no real power to force the Polish government to protect homosexuals. Greg Czarnecki, when speaking about the accession period, stated that “the good thing with being a candidate is that we *had* to accept certain amendments to our laws [...] this means that the only place in Polish law which mentions sexual orientation is the labour code due to an EU directive”. Wojciech Szot also attributed the introduction of anti-discrimination measures in employment to the EU; although he went on to say that this is still rather limited as it only covers anti-discrimination in one area. This is because LGBT rights were quite weak in Community law during the early 2000s. So although it did help improve the legal situation for homosexuals, it has been criticised as a wasted opportunity, given the variety of LGBT rights covered in previous European Parliament reports. Furthermore, Campaign Against Homophobia’s legal team has reported on many cases of discrimination still occurring in the workplace, despite it being prohibited by the Labour Code. According to their report there is an “extremely low level of awareness amongst both employees and employers in terms of the legal regulations which ban discrimination” (Campaign Against Homophobia, 2008:59). This is a clear example of strategic calculation as this law was adopted to gain access to the benefits of the EU, yet has not been adequately enforced.

Currently hard law concerning LGBT rights in the EU is in a similar state to what it was during the Polish accession period. However, a proposal for a sexual orientation anti-discrimination directive (CNS 2008/0140) that extends further than just employment is nearing completion. As mentioned before, the ratification of the Lisbon treaty also makes the Charter of Fundamental Rights binding. Although Poland has opted out of that particular part of the treaty, the Charter should help promote future Community law in favour of LGBT rights.

The other case of binding European law on Polish LGBT rights, *Baczkowski and others v Poland* at the European Court of Human Rights, was brought up by Wojciech

Szot. This case was won on the basis of freedom of assembly, prohibition of discrimination and the right to an effective remedy (Articles 11, 14 and 13, respectively) (Van den Bogaert, 2007:889). The Court ruled that the march was banned on the basis of its nature, which violates the ECHR. All of the marches since this case have been allowed to proceed. However, as Van den Bogaert (2007:890) also points out, the Polish Supreme Administrative Court ruled that a ban on a similar march was illegal as well. Both cases indicate positive legal developments, but make it harder to assess how much influence the ECtHR had alone. Furthermore, as Wojciech Szot pointed out, this is still rather limited. It allows further marches to go ahead and indicates that such illegal bans will not be tolerated, but it does little to end the discrimination that Polish LGBT people face.

It is also important to note that the ECtHR can only have a significant impact if other positive factors are present, such as respect for democratic principles and strong participation in European politics (which are present in Poland). For example, cases have been brought to the ECtHR against Russia in 2006, 2007 and 2008 for the banning of LGBT marches in those years, and are yet to lead to any developments (European Court on Human Rights, 2009).

There are also examples of behavioural change by Polish politicians that has not resulted from hard European law. Wojciech Szot and Tomasz Szypula both stated that there has been a significant reduction in the amount of homophobic hate speech by politicians. They point to the condemnation Poland has faced in reports by the European Parliament,²¹ the European Commission and from NGOs from 2006 onwards over politicians making homophobic public statements. Although, as Graff (2006:441) points out, this was initially received as an attack on Polish moral standards, Tomasz Szypula claims that Polish politicians had no choice but to accept this and start to respect LGBT rights. He also puts this change in behaviour down to Poland being involved in European politics, stating that “the new government of Civic Platform (PO) is much less openly homophobic because they are much more involved in European politics and they don't want to be called 'homophobic' [...] it doesn't mean though that they are supporting gay rights”. Although this shows evidence of

²¹ See the resolutions on homophobia in Europe covered in chapter two.

strategic calculation by the Polish politicians, it could also be an example of role playing – the actors are behaving appropriately by European standards. Although most Polish politicians that were previously openly homophobic have now adapted their behaviour to what is appropriate, they still do not offer any support for LGBT rights. There are also still cases of homophobic speech by politicians, such as the 2010 case of a PiS member of the European Parliament comparing homosexuality to paedophilia and other practices (Campaign Against Homophobia, 2010). This arises from the difficulties of applying the European socialisation effect over a large number of politicians who may not be directly involved in European politics. However, the fact remains that there have been far less homophobic statements made by politicians.

There are also some examples of elite socialisation at the European level. Tomasz Szypula points to the case of Jerzy Buzek, who had been openly homophobic whilst he was Prime Minister of Poland between 1997 and 2001. Just before being elected President of the European Parliament in 2009 he came out in favour of anti-discrimination laws and civil partnerships. It is clear that his involvement in the European Parliament and his bid for its presidency had an influence on his previously homophobic views. Whether this has changed because of what he considers appropriate in European politics (role playing) or because he now genuinely believes in these rights (normative suasion), however, is not clear.

Although these cases strongly indicate that discrimination against the LGBT community is not acceptable to the EU or the ECtHR, the Polish government has taken a minimalist approach to tackling such discrimination. Wojciech Szot, Greg Czarnecki and Tomasz Szypula all acknowledged that the Polish authorities have complied with binding decisions by both these institutions, but have done nothing further to protect LGBT rights. As Poland is also the largest recipient of the European Social Fund – set to receive over 9 billion euros between 2007 and 2013 (European Social Fund, n.d) – it appears that the Polish government has changed its behaviour to the minimum that is considered appropriate by European standards. This shows evidence of strategic calculation and role playing being employed by the Polish government to act appropriately, whilst not changing their views on LGBT rights.

Normative suasion in Poland

Hard legislative change can only go so far as binding directives and court cases have a limited effect on attitudes and tolerance in society. Poland's integration into Europe's international organisations has resulted in a variety of more subtle changes on societal attitudes. Although this has to contend with domestic factors, such as national identity and the strength of the Catholic Church, there is evidence of progressive change beginning to take place.

Wojciech Szot and Greg Czarnecki both stated that the general public have become more open to support and more tolerant towards LGBT people, in part thanks to activities by European organisations, although they both stressed that support is minimal. Wojciech Szot attributes this to NGO campaigns, both national and international, and to help from EU programmes. However, he also states that this only helps anti-discrimination and social aims and does not extend to civil partnerships. Campaigns such as 'All Different All Equal' by the Council of Europe (Salto-Youth, 2010) and the 'European Year of Equal Opportunities for All' (European Parliament and Council) have worked alongside national campaigns by the Campaign Against Homophobia to raise awareness of LGBT rights and the discrimination faced by LGBT people. Greg Czarnecki also attributed interaction with other European countries to the general public becoming more tolerant, saying that "more and more people are travelling to other countries and seeing the LGBT people can exist and won't be the downfall of our country". However Samuel Nowak rejected any improvement, saying that public demonstrations by the LGBT community have only made homophobia more obvious. He claims that conservative modernism – that is, the persistence of religious and conservative values despite liberal economic reform – has hindered social progress. This is similar to Marody and Mandes' (2005) observations on religious influence on national identity.

Campaign Against Homophobia has used Polish participation in European politics to its advantage. According to Greg Czarnecki, Campaign Against Homophobia has used reports and resolutions from the EU and Council of Europe to further legitimise their lobbying for legislative change. Campaign Against Homophobia (2008) has also requested intervention by the EU on incidences where the Registry Office has refused

to issue the documentation required for marriage abroad to homosexuals, but is still awaiting a response. These actions are outlined in Campaign Against Homophobia's 2008 report *When Words Are Weapons* (pp. 57-60). However as this is yet to lead to any change, these examples only show the limitations of European assistance.

Another key influence identified by the three respondents currently involved with active LGBT NGOs is the funding and assistance provided by European organisations and NGOs, which has significantly helped Polish campaigns. The two European campaigns mentioned in chapter two – the 'European Year for Equal Opportunities for All' and 'All Different All Equal' have both been implemented in Poland, and included training courses and NGO capacity building. However, there was some controversy over the Council of Europe's campaign 'All Different All Equal'. The Ministry of Education wanted to replace the word "equality" with "solidarity", claiming that the word "equality" is overused and "reminds one of [LGBT] equality parades" (Graff, 2006:448). Gruszczynska (2007:110) emphasises the lack of funds Polish LGBT NGOs face in her study of the Polish movement on the internet, stating that the internet has played a vital role to Polish NGOs as few of them can afford offices due to the difficulties of accessing funds. Wojciech Szot also stated that it is his own opinion that financial support aimed at developing NGOs would be useful too, as opposed to more 'bail-out' style funding (such as emergency funds granted to prevent an NGO becoming insolvent). According to ILGA-Europe (2001:53) the number of LGBT organisations dropped from fourteen in 1992 to five in 1999 – which highlights the difficulties LGBT NGOs face in Poland. Although some of the European activities have been aimed at tackling the issues NGOs face, it is difficult to sustain NGOs in a climate unsympathetic to their activities.

Both Tomasz Szypula and Wojciech Szot stated that Polish NGOs are the only organisations in a position to change societal attitudes and increase tolerance. These organisations are vital to applying European notions of equal rights to Poland as they act as middlemen between the national and international level. Although there is still little evidence of normative suasion taking place, local NGOs are vital to the process. Problems with funding and government hostility have severely undermined this process.

Explaining the socialisation effect

The theory of socialisation covered in the literature review stated two possible outcomes: the actor either rationally adapting their behaviour, or the actor actually adopting the norm into their own identity. The first section of this chapter covered cases where hard supranational law superseded Polish law and resulted in this first effect of socialisation. The legislation in the Polish Labour Code was altered to prohibit discrimination based on sexual orientation, yet evidence provided by KPH shows discrimination still taking place. This is a clear example of the Polish authorities changing their behaviour by altering the labour code, but the attitudes of employers remaining the same. The ban of the Warsaw Pride event was ruled illegal in 2007, and since then LGBT marches have been allowed to take place without hindrance by the local authorities. As both cases show the bare minimum has been done to comply with international rules, it is clear that the actors involved have changed their behaviour due to strategic calculation, but not necessarily their beliefs as KPH has documented many cases of homophobia still occurring (Campaign Against Homophobia, 2008). The logic of appropriateness has also influenced the use of homophobic language by politicians. As stated above, there have been less examples of this since Poland faced condemnation by European organisations. This shows clear evidence of being a case of role playing. Politicians do not want to be labelled homophobic so have stopped making homophobic public statements, yet they have done nothing to promote LGBT rights, indicating that their views remain the same. The exception to this is the president of the EP, Jerzy Buzek, although it is not clear if this is just an example of greater role playing or normative suasion.

The lack of focus and consensus on issues such as same-sex unions and child adoption in binding measures by the EU and the ECtHR, as covered in chapter two, combined with the nature of Polish national identity, has resulted in very little change in Poland on these issues. This is despite calls for complete equality in all spheres of life by the European LGBT movement, although the issue of child adoption has been carefully avoided by the Polish LGBT movement (Graff, 2006:438).

In the previous section, two of the respondents claimed that the general public are becoming more tolerant and open to the idea of LGBT rights. They both attributed

this to work by the Polish LGBT movement and aid from European organisations. The hard law cases covered in the first section have also helped this development, particularly the ECtHR ruling that the ban on the Warsaw march was illegal. This, alongside the other ECtHR decisions covered in chapter two, has given the Polish LGBT movement an important lobbying tool (Campaign Against Homophobia, 2008b). Although the respondents stated that European pressure is necessary for legislative change, they also acknowledged that NGOs have to change attitudes embedded in society in order for any change to be meaningful. This shows that normative suasion is more important for effective change and reaffirms the role that NGOs play in channelling European norms down to the local level (Gordon and Berkovitch, 2007).

The second section of this chapter has also shown the way in which some activists within the Polish LGBT movement have used activities at the European level to their advantage – for example KPH using European reports and court cases to lobby for change and legitimises their goals (Campaign Against Homophobia, 2008b:57-61). However, this has also led to a backlash. The initial negative reactions to the European Parliament resolutions prompted some people, particularly Euro-sceptics, to question why the EU should be able to tell Poland how to conduct its social policy (Graff, 2006:442). Samuel Nowak, who appears to be rather pessimistic about European influence, stated that “EU directives resonate with resistance as people find them to undermine ‘Polish’ identity and values”.

Conclusions

The aim of this dissertation was to assess the influence of European organisations on LGBT rights in Poland. The previous chapter has shown that although there has been some change, there is still some way to go. A recent review conducted by the UN Committee on Economic, Social and Cultural Rights (CESCR) (2009) reported that the Polish government gave “no response” to questions about what is being done to tackle homophobia in the workplace, in schools and when asked about plans for same-sex marriage (Campaign Against Homophobia, 2009b). The *When Words Are Weapons* report by Campaign Against Homophobia (2008) also highlighted many examples of discrimination still continuing to occur. The examples of limited change – the change to the labour code, bans on marches being ruled illegal and the reduction of homophobic statements by politicians – are all examples of strategic calculation and role playing leading to behavioural, not belief, change. So why have European organisations been unable do more when discrimination is clearly not acceptable to the organisation and the majority of its older members (Swiebel, 2002; Kollman, 2009)?

Chapter two showed that despite all the rhetoric about being against discrimination, the EU still faces severe limitations when it comes to passing binding measures on LGBT issues. Although this norm prohibits all forms of discrimination and is in favour of same-sex unions, it lacks backing from hard law (except for discrimination in the workplace). The ECtHR has stated that it requires a general consensus among its own member countries before it will rule on a controversial issue (European Court of Human Rights, 2002), which may restrict it more than the EU, given it has forty-seven members compared to the EU’s twenty-seven. The main progress at the European level has also come from norm creation by NGOs, actors within the EU (i.e. through reports and resolutions) and the ECtHR, not by the states themselves. Although research by Kollman (2009) has shown the European norm to be more successful than binding measures alone at triggering change in Austria, the same does not appear to apply to Poland – at least not yet. Samuel Nowak pointed to conservative modernism in national identity as being a main barrier to social change, an opinion backed up by research done by Graff (2006) and Gruszczynska (2009a). This national identity, as Checkel (2001) stated, has been powerful enough to resist

adaptational pressure from Europe. Although two of the respondents pointed to some positive changes in societal attitudes, backed up by surveys such as Pew Global Attitudes Project (2007), there is still yet to be any improvements on LGBT rights.

This conclusion also helps to confirm the vital role that NGOs play to adapting international norms to local culture (Gordon and Berkovitch 2007; Merry, 2006). Organisations such as Campaign Against Homophobia play a vital role in changing societal attitudes and allowing progressive change to occur. Legislation implemented by European powers would be ineffective without popular acceptance (Campaign Against Homophobia, 2008).

There are likely to be future developments at the European level, such as the proposal for a directive on prohibiting discrimination based on sexual orientation in all spheres (CNS 2008/0140) nearing completion. The 2009 ratification of the Lisbon Treaty also means that the Charter of Fundamental Rights could be used to expand Community law concerning LGBT rights, although this would still require support from EU member states. According to Alter's (2000) theory, the new competence given to the ECJ by the Lisbon Treaty could be used by domestic actors to force laggard states to apply and expand on Community law. Any new developments at the European level would warrant further research into how this affects laggard states.

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Appendix one – Additional information on the respondents and their organisations

Tomasz Szypula is the founder and first coordinator of the Krakow Culture for Tolerance Festival in 2004 and has served on the board of ILGA-Europe. He is currently vice-president of Campaign Against Homophobia. Campaign Against Homophobia (website: <http://world.kph.org.pl/?lang=en>) was established in 2001 and is now the largest NGO in Poland working towards LGBT equality. Their activities include psychological and legal assistance, research and report projects, awareness raising campaigns and lobbying for legislative change.

Greg Czarnecki is the project coordinator and international relations officer for Campaign Against Homophobia. He is currently coordinating the “Monitoring Discrimination Against LGBT People in Poland” project, a three year project that monitors media and legal developments concerning LGBT rights in Poland.

Wojciech Szot works for Lambda Warszawa Association (website: <http://www.lambdawarszawa.org/content/view/83/93/>). The Association is national by law, but focuses its activities more at the local level (around Warsaw). Founded in 1997, their aims are to build a positive identity among LGBT people, combat discrimination against them and combat sexually transmitted diseases. They also host events to raise awareness and to train teachers, public officials and social workers about how to deal with issues of discrimination against LGBT people.

Samuel Nowak is the project manager for Culture for Tolerance Foundation (website in Polish: <http://www.tolerancja.org.pl/>). He was involved in the organisation of Culture for Tolerance festivals and marches alongside Tomasz Szypula. Culture for Tolerance Foundation is no longer involved in any anti-discrimination projects; it now focuses on queer art.

Appendix two – Sample of questions asked in the questionnaires

- What do you perceive do be the main barriers to equal rights for the LGBT community in Poland?
- Do you think it would have a positive or negative affect on attitudes towards LGBT people if the EU were to force (or attempt to force) an unwilling Polish government to take new measures to protect LGBT people from discrimination?
- In 2005 and 2006 the European Commission and Amnesty International publicly expressed concern over the condition of LGBT rights in Poland. Do you feel the situation has improved since then? If so, please give details.
- If there has been an improvement, would you attribute any of this to the help of international organisations – both governmental and non-governmental (e.g. European Union, Council of Europe, ILGA-Europe, and Amnesty International). If so, which would you deem to have been more helpful?
- Your website states your aim to build a positive image of LGBT people and create a climate of social acceptance. How helpful do you find the “top down” work being done by European organisations such as the EU concerning LGBT rights in Poland?
- Do you believe membership in the European Union has effected perceptions and attitudes towards the LGBT community in Poland? Overall, has it been positive or negative?